



Office of the City Manager

PUBLIC HEARING

January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department

Subject: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

RECOMMENDATION

Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action:

Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

SUMMARY

The proposed cannabis ordinances would revise definitions and establish operating standards for new and existing cannabis businesses in Berkeley, and include new regulations based on commission recommendations, Council direction, and Resolution 68,326-N.S., which established Berkeley as a sanctuary city for recreational cannabis use. The new ordinances would fully address new uses (Delivery-Only Retailers, Consumption Lounges and Retail Storefront Microbusinesses<sup>1</sup>), and modify development standards and signage requirements for existing uses.

The proposed ordinances were reviewed by the Cannabis Commission (CC) and the Community Health Commission (CHC). The Planning Commission (PC) also reviewed

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<sup>1</sup> Microbusinesses are businesses that are vertically integrated and comprise at least three of the following four commercial cannabis activities: Cultivation (up to 10,000 square feet); Retailer; Distributor; and Manufacturer (Type 6, non-volatile solvents only).

changes related specifically to the Zoning Ordinance (BMC Title 23). The minutes from those meetings contain the recommendations from the respective commissions and are included as Attachment 7 to this report. Communications from each of the commissions, containing the rationale behind the recommendations, are also included here as Attachment 8. Where commission recommendations differ from staff recommendations, alternative language is provided within each ordinance for Council consideration.

#### FISCAL IMPACTS OF RECOMMENDATION

The new regulations would have fiscal impacts related to the cost of staff time necessary to monitor new cannabis businesses and activities, and revenue impacts of having additional cannabis businesses paying permit fees and taxes to the City.

##### Costs

City staff would be responsible for reviewing and issuing business licenses and operating permits and responding to community questions and concerns. Businesses would be subject to at least two inspections per year to determine compliance with local regulations; costs would be covered by permit fees. The department primarily involved in reviewing and issuing operating permits and inspecting businesses would be Health, Housing and Community Services (Environmental Health Division). Indirect costs may be incurred by the Public Health Division if staff develop cannabis-related public health impact assessments and/or public health campaigns.

##### Revenue

In FY 2019, cannabis businesses generated \$1,809,820 in business license taxes, comprising \$641,019 from medical cannabis receipts and \$1,168,800 from adult-use cannabis receipts. Additional cannabis businesses could result in additional revenue.

#### CURRENT SITUATION AND ITS EFFECTS

The proposed ordinance would modify regulations and address uses which are not in the current ordinance, including Delivery-Only Retailers and Lounges. Amendments to Title 12 (Health and Safety) of the Berkeley Municipal Code would add definitions for new uses, add new operational standards for Retailers, and specify consumption regulations. Amendments to the Zoning Ordinance would adopt development standards for Delivery-Only Retailers and Lounges, modify development standards for Retailers, and establish buffers and locations for Cultivators, per Council direction.

The following are synopses of each proposed change to Berkeley's cannabis ordinances. The ordinance language reflects staff recommendations developed by a working group which included representatives from Planning, Police, Finance, Public Health, Environmental Health, and Economic Development. The group attempted to balance the issues from each unique perspective to reach recommendations which best serve the interests of the residents of Berkeley. In cases where a commission's recommendation differs from that of staff, alternatives are provided. Refer to

attachments noted in the text below to review specific ordinance language and alternatives. *In cases where a commission's recommendation differs from that of staff, alternatives are provided. Refer to attachments noted in the text below to review specific ordinance language and alternatives.*

**A. Amendments to Title 12 (Health & Safety) of the Berkeley Municipal Code to modify general regulations and specific operating standards for cannabis businesses and activities** (see Attachment 1)

The proposed ordinance would:

- Modify the existing Chapter 12.21 (Cannabis Businesses: General Regulations) to add definitions to the BMC related to Consumption Lounges (Lounges) and Retail Storefront Microbusinesses.
- Modify the existing BMC Chapter 12.22 (Cannabis Business Operating Standards) to specify where commercial on-site consumption could occur and the signage regulations for Retail Storefront Microbusinesses.

The following subsections include options based on recommendations by one or more Commissions (see Attachments 7 and 8 for more details):

12.22.035 – Prohibition of Products Attractive to Children and Youth

*Description:* The Community Health Commission recommended additional provisions on the prohibition of the production or sale of products in Berkeley that could appeal to youth (see 12.22.035 in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not include additional provisions because State regulations already prohibit packaging and labelling attractive to children, as well as advertising that appeals to children. The State regulations include prohibiting the use of cartoons, images, characters or phrases that are popularly used to advertise to children, and the terms “candy”, “candies” or variants in spelling such as “kandy” or kandeez”.<sup>2</sup> Cannabis businesses that violate state regulations are subject to fines, suspension and/or revocation of the State license.***
- *Alternative Recommendation (Alternative B):* The CHC recommended alternative language in order to protect youth.

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<sup>2</sup> For more detailed information, see Section 5303(a)(1)(D) in the Bureau of Cannabis Control (BCC) regulations (<https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/01/Order-of-Adoption-Clean-Version-of-Text.pdf>) and Sections 40300(k) and (m) and 40410(b) in the CA Department of Public Health regulations ([https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/CDPH%20Document%20Library/DPH17010\\_FinalClean.pdf](https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/CDPH%20Document%20Library/DPH17010_FinalClean.pdf)).

12.22.040.E – Retailer Signage

*Description:* The Community Health Commission recommended adding additional requirements for flyers and signage to be displayed in Storefront Retailers and distributed to delivery customers warning of possible health and legal implications of cannabis use for the general public, immigrants, parolees, and persons under the age of 21 (see 12.22.040.E in Attachment 1). Signage is already required to explain: 1) Dangers of operating heavy machinery while using cannabis; 2) Lack of testing for health, safety or efficacy and potential for health risks; 3) Provision of medical cannabis only to Qualified Patients and their Primary Caregivers; 4) Illegality of diversion of medicinal cannabis for non-medical purposes; and 5) Illegality of diversion of cannabis to persons under the age of 21 (see 12.22.040.E in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not include these restrictions because the City already requires five warning notices designed to address health and safety risks.***
- *Alternative Recommendation (Alternative B): The CHC recommended additional signage to address health issues and legal issues not currently covered.<sup>3</sup>*

12.22.040.F.2 – Consumption of Cannabis<sup>4</sup>

*Description:* Allow consumption of cannabis at a Lounge, located within a Storefront Retailer. Smoking and vaping would only be permitted at Lounges equipped with a ventilation system capable of removing all detectable odors, smoke, and by-products of combustion (see 12.22.040.F.2 in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff recommended allowing consumption of cannabis at Lounges because cannabis consumption is prohibited in public, in most businesses, and in many apartments. Providing a place to consume cannabis legally is important for patients who have no other options. The Police Department enforces driving under the influence by watching for impaired drivers city-wide (e.g., due to consumption of alcohol, cannabis, prescription drugs, etc.). The City's Public Health staff expressed concern that allowing smoking or vaping in a commercial store will expose workers to second-hand smoke and conflicts with the City's smoke free workplace ordinance (BMC Section 12.70.040).***

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<sup>3</sup> If required, additional warnings would need to be vetted by the City's Public Health Division to ensure they reflect current scientific understanding.

<sup>4</sup> The Council should note that the Berkeley Health Code prohibits smoking and vaping in public places, including retail stores, restaurants, bars and recreation areas (BMC Chapter 12.70). Per State law, cannabis smoking and vaping is prohibited where tobacco smoking and vaping is prohibited. If the Council adopts regulations allowing cannabis smoking or vaping in public areas, including cannabis Lounges, the Health Code will need to be amended before that portion of the ordinance can take effect.



- *Alternative Recommendation (Alternative B):* The CHC did not recommend allowing cannabis consumption at a place of business because of the risk of secondary exposure to cannabis smoke and vapor and the risk of impaired driving. The CHC believes that public consumption would undermine City policies that promote smoke-free air and reduce social normalization of smoking.

#### 12.22.040.J – Restrictions on Products at Retailers

*Description:* The Community Health Commission recommended prohibiting the sale of flavored smoking and vaping products, flavored cannabis-infused beverages, and non-cannabis merchandise branded with cannabis businesses or products (see 12.22.040.J in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not recommend expanding State restrictions on products that may be sold by a Retailer because additional restrictions would only apply to Berkeley businesses, requiring special monitoring and putting them at a competitive disadvantage to businesses located in other jurisdictions.***
- *Alternative Recommendation (Alternative B):* The CHC recommended this additional restriction to limit the promotion and normalization of cannabis in the community, which has a direct impact on youth.

#### **B. Amendments to Chapter 20.40 of the BMC to establish cannabis business signs and cannabis product advertising regulations (see Attachment 2)**

The proposed ordinance would add regulations for Delivery-Only Retail signage and prohibit logos depicting cannabis or cannabis products on business signage.

The following subsections include options based on recommendations by one or more of the Commissions:

#### 20.40.130.D – Logos on Signage

*Description:* Prohibit new depictions of cannabis or cannabis products (such as leaves, joints, green crosses) on business signage. Existing businesses whose current logos incorporate cannabis or cannabis products and that was based in Berkeley prior to 2020 will be allowed to use their logo on signage (see 20.40.130.D in Attachment 2).

- ***Staff Recommendation (Alternative A): This prohibition would reduce the visual presence of cannabis advertisements in order to reduce the normalization of cannabis which has a direct effect upon youth.***
- *Alternative Recommendation (Alternative B):* The CC recommended treating cannabis businesses like other businesses and not placing additional restrictions on signage.

**C. Amendments to Chapter 23C.25 of the BMC to clarify and modify the cannabis land use ordinance (see Attachment 3)**

The ordinance would rescind the current Chapter 23C.25 and readopt it to:

1. Modify Section .010 to add regulations for Retailer locations, add discretion and buffers for Storefront Retailers, and add regulations for Lounges and Storefront Retailers.<sup>5</sup>
2. Add Subsection C to provide development standards for Delivery-Only Retailers. See paragraph below for discussion of limitations on the number of Delivery-Only Retailers.<sup>6</sup>
3. Modify Section .020 to allow Cultivation uses outside the Manufacturing (M) District.<sup>7</sup>
4. Reformat the Chapter to make it easier to understand. These changes reword or re-order regulations, but do not change policy direction.

Limitations on the Number of Delivery-Only Retailers. Subsection C contains two Sections (23C.25.010.C.1 and 23C.25.010.C.4), which relate to quotas and location restrictions for Delivery-Only Retailers. These regulations are designed to limit the number of these businesses, either citywide or in manufacturing districts. In order to ensure regulations in these two sections are not in conflict, advantages and disadvantages of each are presented here in one place. The specific staff and commission recommendations for these issues will be addressed under the specific ordinance section.

The initial decision points are 1) whether a limit on the number of Delivery-Only Retailers is desired, and 2) whether that limit should be applied citywide or only in manufacturing districts. Staff has identified the following advantages and disadvantages to consider.

Advantages of Limitations	Disadvantages of Limitations
<ul style="list-style-type: none"> <li>• Prevents impacts from too many businesses locating in the city or in a particular district.</li> <li>• Limits competition of well-funded cannabis businesses with artists and manufacturers for tenant spaces in manufacturing districts.</li> </ul>	<ul style="list-style-type: none"> <li>• Limits tax revenue by restricting potential businesses.</li> <li>• Often requires a selection process to determine which businesses can operate in the city/district.</li> <li>• Conflicts with current practice of removing quotas on businesses.</li> </ul>

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<sup>5, 6, 7</sup> Policy changes shown in **BOLD** in the Ordinance (Attachment 3)

	<ul style="list-style-type: none"> <li>• Limits opportunities for microbusinesses by limiting areas where three cannabis business types can operate.</li> <li>• Further constrains location options for Delivery-Only Retailers, as many property owners do not want to lease to cannabis businesses.</li> </ul>
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If the Council decides that a limit is necessary, then a method for achieving that limit needs to be determined. Staff has identified three general methods that could be used to limit businesses within Berkeley: Numeric limits (quotas); Concentration limits (buffers); and Operator limits (ownership restrictions). These methods can be used separately or together, based on the intention of the limit. See the table below for the advantages and disadvantages of each method.

Limiting method	Examples of method	Advantages	Disadvantages
Numeric limit (quota)	<ul style="list-style-type: none"> <li>• Create citywide cap on number of businesses</li> <li>• Create district specific cap on number of business</li> </ul>	<ul style="list-style-type: none"> <li>• Public will know exactly how many businesses are permitted</li> <li>• Easy to describe</li> </ul>	<ul style="list-style-type: none"> <li>• Artificially limits businesses, regardless of demand.</li> <li>• Requires staff time to monitor the number of businesses.</li> </ul>
Concentration limits (buffers)	<ul style="list-style-type: none"> <li>• Require businesses to be a certain distance from uses or sites, such as schools, parks, similar businesses, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Keeps businesses away from sensitive uses</li> <li>• Prevents over-concentration of businesses</li> </ul>	<ul style="list-style-type: none"> <li>• Limits businesses locating in areas that otherwise would be deemed appropriate.</li> <li>• Potentially pushes businesses into less desirable areas (i.e. closer to schools) when more appropriate locations are taken.</li> <li>• Requires staff time to track business locations.</li> <li>• Is more difficult for applicants to find locations.</li> <li>• Significantly limits the ability of microbusinesses to locate in Berkeley.</li> </ul>

Limiting method	Examples of method	Advantages	Disadvantages
Operator limits (ownership restrictions)	<ul style="list-style-type: none"> <li>Restrict businesses to those meeting a particular criteria (small business, equity business)</li> </ul>	<ul style="list-style-type: none"> <li>Gives additional business opportunities to owners deemed in need of support.</li> </ul>	<ul style="list-style-type: none"> <li>Potentially exceeds the number of candidates expected.</li> <li>Reasoning for the restriction needs to meet legal standards.</li> </ul>

The following subsections include options based on recommendations by one or more of the Commissions:

23C.25.010.A.3 – Cannabis Retailer Location Changes

*Description:* Require Retailers to be in good standing with State and local laws in order to be considered for a change in location (see 23C.25.010.3 in Attachment 3).

- **Staff Recommendation (Alternative A): Staff will confirm compliance with safety and operational standards prior to considering locational changes.**
- *Alternative Recommendation (Alternative B):* The CC did not recommend staff check compliance prior to considering locational changes.

23C.25.010.B.6 – Cannabis Storefront Retailer Buffers

*Description:* Require buffers between Storefront Retailers and the following uses:

- Public or private elementary schools (K-5) = 600 feet
- Public or private middle or high schools = 1,000 feet
- City-operated community centers and skate parks = 600 feet
- Other Retailers = 600 feet

See Attachment 6 for maps depicting the staff recommendation and other options.

- **Staff Recommendation (Alternative A): This provision incorporates input received from the City Council at the October 2018 Work Session. This recommendation is intended to protect youth while providing opportunities for cannabis businesses to locate within the city.**
- *Alternative Recommendation (Alternative B):* The CC did not recommend this requirement. The CC believes the current Storefront Retailer buffer from schools, which is that Storefront Retailers may not be located within 600 feet of another

Storefront Retailer or school – paired with the 21 and older age limit -- are adequate to protect youth from entering a Storefront Retailer.

- *Alternative Recommendation (Alternative C):* The CHC recommended a 1,000-foot buffer from all schools, including junior colleges, colleges, and universities, as well as buffers around parks and libraries. Those additional restrictions are intended to limit cannabis availability in places that children, youth and young adults frequent.
- *Alternative Recommendation (Alternative D):* The PC recommended adopting the staff recommendation (Alternative A), but maintaining the current buffer (Alternative B) until after the proposed Equity Candidate (the seventh Cannabis Storefront Retailer) has selected a location, for the sake of equity.

#### 23C.25.010.C.1 – Delivery-Only Retailers Quota

*Description:* Determine whether a numeric limit (“quota”) should be established for Delivery-Only Retailers, and if so, what the quota should be.

- ***Staff recommends a quota of seven Delivery-Only Retailers, and setting aside all of the permits for Equity Businesses, subject to a selection process. This quota would result in a ratio of one Delivery-Only Retailer per 17,475 residents. This quota is based on the City of Davis’s regulations (4 businesses, or 1 business/17,322 residents), and also matches the averaged business/resident ratios in Oakland and San Francisco (1 business/18,060 residents). The quota could be revisited after three years to determine if the number should be modified or if permits should be made available to non-Equity Businesses.***
- *Alternative Recommendation (Alternative A):* The CC recommended no quota for Delivery-Only Retailers because these businesses should be treated like other businesses and not subject to an arbitrary limit.
- *Alternative Recommendation (Alternative B):* The PC recommended a quota of 10 Delivery-Only Retailers, and setting aside at least half for Equity Businesses.
- *Alternative Recommendation (Alternative C):* The CHC recommended a quota of two Delivery-Only Retailers, both Equity Businesses.

#### 23C.25.010.C.4 – Delivery-Only Retailers in M, MM and MU-LI Districts

*Description:* Permit Delivery-Only Retailers in Manufacturing (M), Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MU-LI) Districts subject to the standards for Warehouse-Based Non-Store Retailers (WBNSR) (i.e. Wine.com, Amazon fulfillment centers, etc.).

- ***Staff Recommendation (Alternative A): Staff recommends that Delivery-Only Retailers be allowed to locate in M, MM and MU-LI, due to similar operational needs and functions as WBNSR. They would be subject to***

**buffers and a recommended citywide quota of seven. This recommendation will also allow opportunities for Microbusinesses to establish in Berkeley. Other cannabis businesses (manufacturers, distributors and testing labs) already locate in these districts without quota restrictions and have not resulted in significant changes to the variety of businesses located in these areas. Delivery-Only Retailers would also be allowed in all commercial districts except the Neighborhood Commercial (C-N), subject to the regulations outlined in Sub-Section 23C.25.010.C.**

- *Alternative Recommendation (Alternative B):* The PC recommended allowing Delivery-Only Retailers in all C-prefixed districts except C-N, but limiting them to the M District in order to protect manufacturers and artists in the MM and MU-LI Districts from being displaced by cannabis businesses.

#### 23C.25.010.D – Lounges

*Description:* Allow public consumption at Lounges. Smoking and vaping could only occur at Lounges equipped with a ventilation system capable of removing all detectable odors, smoke and by-products of consumption (see 23C.25.010.D in Attachment 3).

- ***Staff Recommendation (Alternative A): Cannabis consumption is prohibited in public, in most businesses, and in many apartments. Staff recommends this language because providing a place to consume cannabis legally is important for patients who have no other options.***
- *Alternate Recommendation (Alternative B):* The CC agreed with staff and recommended adding language to reference State law.
- *Alternate Recommendation (Alternative C):* The CHC did not recommend language that allows cannabis consumption at Lounges because of the risk of secondhand smoke and vapor exposure, and the risk of impaired driving. The CHC believes that public consumption would undermine City policies that promote smoke-free air and reduce social normalization of smoking.

#### 23C.25.020 – Cultivation Locations

*Description:* Allow Cultivation businesses to locate in the MM and MU-LI Districts (see 23C.25.020 in Attachment 3).

- ***Staff Recommendation (Alternate A): Staff recommends this expansion of cultivation areas. Commercial cannabis cultivation is currently only allowed in the M District, has a citywide cap of 180,000 square feet, and is prohibited outside of a building. According to research conducted by the CC in 2014, the M District has limited rental space, a low vacancy rate, and few property owners willing to rent to cannabis businesses. No cultivation businesses have located in Berkeley since they were approved by Council***

***in 2016; expansion to the MM and MU-LI Districts could create an opportunity for these businesses to find viable locations in Berkeley. Cultivation businesses are not considered warehouse or manufacturing uses and will not be able to replace protected uses, such as manufacturers and artists.***

- *Alternative Recommendation (Alternative B):* The CC agreed with the staff recommendation, but also recommended allowing outdoor commercial cultivation, as indoor cultivation is very expensive and energy intensive.
- *Alternative Recommendation (Alternative C):* The PC and CHC recommended maintaining the current location restrictions. The PC expressed concerns about manufacturers and artist in the MM and MU-LI Districts competing with cannabis businesses for tenant spaces. The CHC expressed concern about odors from cultivation businesses.

#### **D. Amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts) (see Attachment 4)**

The ordinance would add references to Delivery-Only Retailers to the use tables of commercial and manufacturing chapters. This reflects the provisions in Chapter 23C.25 regarding the location of businesses and the level of discretion required.

There were no differences between the staff and commission recommendations regarding the use tables. The tables will be amended as necessary to reflect the final Council decision on Delivery-Only Retailers identified above.

#### **E. Amending BMC Sub-Title 23F (Definitions) (see Attachment 5)**

The ordinance would add or modify definitions for cannabis uses in the Definitions chapter in the Zoning Ordinance to clarify how these businesses relate to other businesses.

The following subsection includes options based on recommendations by one or more of the Commissions:

##### 23E.04.010 Definitions

*Description:* Treat Delivery-Only Retail like Warehouse Based Non-Store Retail (WBNSR) in the M, MM and MU-LI Districts.

- ***Staff Recommendation (Alternative A): Staff recommended this language because Delivery-Only Retailers often operate like a fulfillment center, similar to Amazon.com or Wine.com.***
- *Alternative Recommendation (Alternative B):* The PC recommended limiting Delivery-only Retailers to the M District due to concerns about the ability of

manufacturing and arts and crafts businesses to compete for space with cannabis businesses.

### BACKGROUND

In 2018, the State established the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a regulatory framework for the medicinal and adult use cannabis industry. Through a combination of ballot measures and ordinances, all of the business types permitted by the State are allowed to operate in Berkeley:

- Cultivators (produce seeds, immature plants (clones) and mature plants which are harvested);
- Manufacturers (take raw product and create other products, including edibles);
- Testing Laboratories (test product for potency, pesticides and impurities);
- Retailers (selling product to the public at commercial storefronts and dispensaries, and including Delivery-Only Retailers which deliver products to people at their homes and are not open to the public);
- Distributors (transport product between businesses and collect State taxes); and
- Microbusinesses (combination of at least three of the other business types except testing labs).

In order to address the State's new regulations, draft regulations were developed with the participation of numerous City departments, including the Planning, Finance, Police, and Fire Departments, the Department of Health, Housing & Community Services, the City Attorney's Office, and the Code Enforcement Unit in the City Manager's Office. The Cannabis, Planning, and Community Health Commissions started policy discussions in early 2018.

Based on direction from the October 9, 2018 City Council Work Session, the draft regulations were divided into two rounds. Round 1 considered most of the draft regulations, including inconsistencies with State regulations, operational standards, policy changes such as advertising regulations, and regulations for Retail Nursery Microbusiness and temporary cannabis events. These ordinance amendments were adopted at the April 2, 2019 Council meeting. The items included in this report were continued to a second round to allow further research and discussion. Multiple Commission meetings were again conducted to review these Round 2 amendments. Minutes of those meetings are provided in Attachment 7 to this report.

### ENVIRONMENTAL SUSTAINABILITY

The proposed amendments will continue to allow a complete supply chain for the cannabis industry in Berkeley, allowing the public to purchase products produced locally and allowing Berkeley to benefit from increased business activity in this expanding industry. The amendments will maintain the energy efficiency features and carbon-



offsetting requirements already adopted by the Council for Cultivators. Other cannabis businesses are comparable to non-cannabis businesses in terms of energy consumption, and will be subject to the same standards for building efficiency. The environmental impact of cannabis delivery by existing Berkeley-based storefronts or cannabis businesses established in other jurisdictions has not been analyzed.

#### RATIONALE FOR RECOMMENDATION

The adoption of these proposed ordinance amendments would ensure that Berkeley's cannabis regulations are consistent with the State's regulations and clarify specific standards for each license type. These regulations will be consistent with the voter direction given with the passage of Measures JJ (2008) and T (2010) and Proposition 64 (2016), and will increase the likelihood of these businesses operating harmoniously within Berkeley neighborhoods.

#### ALTERNATIVE ACTIONS CONSIDERED

Alternative recommendations are described within the body of this report.

#### CONTACT PERSON

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#### Attachments:

1. Ordinance Amending the Berkeley Municipal Code Title 12 (Health and Safety)
2. Ordinance Amending the Berkeley Municipal Code Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising)
3. Ordinance Amending the Berkeley Municipal Code Chapter 23C.25 (Cannabis Uses)
4. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.E (Provisions Applicable in All Non-Residential Districts)
5. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.F (Definitions)
6. Maps of Buffer Options for Cannabis Storefront Retailers
7. Minutes from Cannabis, Community Health and Planning Commissions
8. Communications from Cannabis, Community Health and Planning Commissions providing reasoning for recommendations
9. Public Hearing Notice

## ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 12 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTERS 12.21 AND 12.22

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 12.21.020 is amended to read as follows:

**12.21.020 Definitions**

A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9- tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol, cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater than .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.

B. "Adult Use Cannabis" means Cannabis and Cannabis Products intended for consumption by adults 21 and over, and that is not Medicinal Cannabis.

C. "Adulterant" means any poisonous or deleterious substance that may render Cannabis or Cannabis Products impure or injurious to health, as determined by the City's Environmental Health or Public Health Divisions.

D. "Adulterated" means any Cannabis or Cannabis Product with Contaminants exceeding any testing thresholds and/or containing any Adulterant.

E. "Batch" shall have the same meaning as set forth in MAUCRSA, as amended from time to time.

F. "Cannabis" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both adult-use and medicinal cannabis.

G. "Cannabis Business" is a business possessing a State license as specified in Section 26050 of the Business and Professions Code, as amended from time to time, and includes Cannabis Businesses with an "A" designation ("ACB") and Cannabis Businesses with an "M" designation ("MCB").

H. "Cannabis By-Products" means delta-8-THC and cannabinol when present in amounts greater than 0.2% of a product's dry weight.

I. "Cannabis Compound(s)" means any or all of the following chemicals, as the context requires:

1. "THC" or ""9-THC" means "9-tetrahydrocannabinol, (")-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a- tetrahydro-6H-benzo[c]chromen-1-ol.

2. "THCA" or ""9-THCA" means the acid form of THC.

3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3- diol.

4. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.

5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.

J. "Cannabis Cultivation Facility" or "Facility" shall have the same meaning as "cultivation site" as set forth in Section 26001 of the Businesses and Professions Code. It includes "Major Cannabis Cultivation Facility", defined as follows:

"Major Cannabis Cultivation Facility" means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

"Minor Cannabis Cultivation Facility" means a facility that is less than 10,000 sf in total canopy area.

K. "Cannabis Products" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both medicinal and adult-use Concentrates and Cannabis Products.

DDL. Cannabis Retailer

1. "Retailer" means both Storefront Retailers with a location to which Customers, Qualified Patients, or Primary Caregivers may come to acquire Cannabis or any other good or service, and Delivery-Only Retailers.

2. "Cannabis Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

LM. "Cannabis Waste" means contaminated Cannabis or Cannabis Products that cannot be rendered safe and any Cannabis or Cannabis Products that have been designated as a waste by a Cannabis Business, or regulatory authority. Cannabis Waste does not include materials from the cultivation and manufacturing processes not known to be contaminated with pesticide or heavy metal residues and which may be composted by an approved process.

MN. "Concentrate" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

NO. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof, heavy metal, or any other Adulterant as determined by the Environmental Health Division.

OP. "Cosmetic Cannabis Product" means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures.

PQ. "Cultivate" and "Commercial Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis requiring a license pursuant to MAUCRSA, as amended from time to time.

QR. "Cultivator" means an individual or entity required to be licensed to cultivate cannabis pursuant to MAUCRSA, as amended from time to time.

RS. "Deliver" and "Delivery" shall mean any transit of Cannabis or Cannabis Product from a Retailer to a Customer at a residence.

SI. "Delivery-Only Retailer" is a Retailer that is limited to acquiring Cannabis and delivering it to its Qualified Patients, Primary Caregivers, and adult consumers, and does

not have a location to which Qualified Patients, Primary Caregivers, and adult consumers may come to acquire Cannabis or any other good or service.

U. “Designated Cannabis Smoking Room” means a designated area on the premises of a Cannabis Business where customers may smoke cannabis.

V. “Designated Cannabis Smoking Room Ventilation System” means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion.

FW. “Distributor” means an individual or entity required to be licensed as a distributor pursuant to MAUCRSA, as amended from time to time.

UX. “Edible Cannabis Product” (or “Edible”) means a cannabis product that is intended to be used, in whole or in part, for human consumption, including but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

Y. “Lounge” is a Storefront Retailer that has a Designated Cannabis Smoking Room or a room for consuming edibles that meets State requirements.

VZ. “Manufacturer” means an individual or entity required to be licensed as a manufacturer pursuant to MAUCRSA, as amended from time to time.

WAA. “Medicinal Cannabis” means Cannabis and Cannabis Products intended as medicine for those with a valid physician’s recommendation in compliance with California law.

XBB. “Microbusiness” shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes “Retail Nursery Microbusiness”, defined as follows:

1. “Retail Nursery Microbusiness” is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those products directly related to this business. No cannabis consumption is permitted on site.

YCC. “Nursery” means an individual or entity required to be licensed as a Type 4 Cultivator pursuant to MAUCRSA, as amended from time to time, and includes “Class 1 Nursery” and “Class 2 Nursery,” defined as follows:

1. “Class 1 Nursery” means a nursery that only produces immature plants, such as cuttings or clones.

2. “Class 2 Nursery” means a nursery that produces mature plants with flowers for the purpose of producing seeds, whether for distribution to a Retailer or for research purposes. A Class 2 Nursery may also produce cuttings or clones.

ZDD. “Primary Caregiver” shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

AAEE. “Principal” means any person that has direct or non-delegated indirect authority over the management or policies of a Cannabis Business.

BBFF. “Protected Health Information” means documentation of a an MCB’s Qualified Patient’s medical history or condition other than a physician’s recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or identification card holder. Protected Health Information shall not include information conveyed by a Qualified

Patient to a Retailer regarding such Qualified Patient's medical condition, information conveyed by a Qualified Patient to a Retailer regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's medical condition, or information regarding Cannabis or Medicinal Cannabis Products provided to a Qualified Patient.

**CCGG.** "Qualified Patient" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

~~DD. Retailer~~

~~1. "Retailer" means both Retailers with a location to which Customers, Qualified Patients, or Primary Caregivers may come to acquire Cannabis or any other good or service, and Delivery Only Retailers.~~

~~2. "Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.~~

**EEHH.** "Solvent" means any substance in which another substance is dissolved, forming a solution.

II. "Storefront Retailer" is a Retailer with a location to which Customers, Qualified Patients or Primary Caregivers may come to acquire Cannabis or any other good or service.

**FFJJ.** "Tincture" means an extract of Cannabis or solution of such, typically made with food-grade alcohol or glycerin.

**GGKK.** "Temporary Cannabis Event" shall mean an activity required to be licensed as a temporary cannabis event pursuant to MAUCRSA, as amended from time to time. Such events may involve onsite sale and consumption of cannabis goods and must be operated by a state-licensed event organizer.

Section 2. That Berkeley Municipal Code Section 12.22.035 is added to read as follows:

**ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**ALTERNATIVE B: CHC RECOMMENDATION** – 12.22.035 PROHIBITION OF PRODUCTS ATTRACTIVE TO CHILDREN AND YOUTH

No cannabis products which are designed to be attractive to individuals under the age of 21 shall be manufactured, packaged or sold in Berkeley. This includes, but is not limited to: 1. Cartoon likenesses; 2. Any likeness to images, characters or phrases that are popularly used to advertise to children; 3. Any imitation of candy packaging or labeling; 4. The terms "candy" or "candies"; 5. Any cannabis product or packaging the City determines, on a case-by-case basis, is attractive to children.

Section 3. That Berkeley Municipal Code Section 12.22.040 is amended to read as follows:

### 12.22.040 Retailers

Retailers shall comply with the operating standards set forth in this Section.

A. Retailers must obtain operating permits from and allow inspections by the City of Berkeley Environmental Health Division.

B. Retailers shall only allow Customer visits between the hours of 9:00 a.m. and 9:00 p.m.

C. A Retailer may deliver cannabis only to the extent allowed by its State license.

D. Accessibility. Retailers shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Retailers permitted under Ordinance No. 6826-N.S. shall not be required to comply with such requirements as long as they remain in the same location as when this Chapter became effective, except as may be required by other laws.

E. Signage.

1. All Retailers must either provide to each Customer or prominently display at all points of sale a notice containing the language set forth in this Section.

a. If provided to each Customer, the notice shall be printed on paper that is no less than 5 inches by 8 inches in size, and shall be printed in no smaller than 18-point font.

b. If prominently displayed at all points of sale, the notice shall be printed on a poster no less than 3 feet by 3 feet in size, shall be printed in no smaller than a 28-point font, displayed prominently behind the main dispensing counter at eye-level (i.e., with mid-point five feet above the floor).

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"The use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"WARNING: Cannabis is not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of cannabis or cannabis products."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This M-Retailer provides medicinal cannabis only to Qualified Patients and their Primary Caregivers, who must have a valid California Medical Marijuana Identification Card or a verifiable, written recommendation from a physician for medicinal cannabis."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Medicinal Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of medicinal cannabis for non-medical purposes is a violation of State and local laws."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Adult-Use Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of adult- use cannabis to persons under the age of 21 is a violation of State and local laws."

All A-Retailers that provide delivery services, including Delivery-only A-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

**7. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**7. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

**1. Attention pregnant and breastfeeding mothers** – According to the U.S. Centers for Disease Control and Prevention (CDC), cannabis use during pregnancy can be harmful to your baby’s health, including causing low birth weight and developmental problems.

**2. Driving while high is a DUI** – Cannabis use increases your risk of motor vehicle crashes.

**3. Teen and Youth Brain Development** – Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing brain as late as age 25.

**4. Cannabis use may be associated with greater risk of developing schizophrenia or other psychoses.** Risk is highest for frequent users.

**5. Smoking cannabis long-term** may make breathing problems worse.

**THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY."**

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

**8. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**8. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must prominently display three notices as set forth below:

a. The signs must be at least 2 feet wide by 1 foot tall, posted at eye height (i.e., with mid-point 5 feet above the floor) and posted prominently and conspicuously facing

consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter.

b. The signs must contain the following language in both English and Spanish:

i. "ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for a noncitizen, even in California. This includes lawful permanent residents, undocumented persons, students with visa, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY."

ii. "ARE YOU ON PROBATION OR PAROLE? If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY."

iii. "ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD? If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

**9. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**9. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must display health advisory flyers provided by the City's Public Health Department. The flyer will be developed in conjunction with the Community Health Commission and will be updated periodically as needed based on current scientific evidence, or at least every three years.

a. The advisory must be on a printed sheet of at least 8"x10.5" or equivalent print area (e.g. double-sided half-sheet) with minimum size 16 print.

b. The advisory shall be visible to customers and available for distribution at each dispensing/sales counter.

c. The Public Health Division, in consultation with the Community Health Commission, should review and update the health advisory periodically as needed based on current scientific evidence, or at least every three years.

All Retailers that provide delivery services, including Delivery-Only Retailers, must provide this notice to each Customer.

#### F. Consumption of Cannabis

1. The consumption of Cannabis or Cannabis Products in public places is prohibited.

**2. ALTERNATIVE A: STAFF RECOMMENDATION** - Notwithstanding subsection 12.22.040.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.



**2. ALTERNATIVE B: CHC RECOMMENDATION** - Notwithstanding subsection 12.22.040.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.

G. Delivery Requirements

1. Medicinal and Adult Use cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

2. All Retailers that provide delivery services must comply with the following requirements.

a. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.

b. The following persons may not drive delivery vehicles:

i. a person who does not possess a valid driver's license;

ii. a person who has been at fault within the immediately preceding two years in any motor vehicle accident causing death or personal injury;

iii. a person who has been at fault in three or more motor vehicle accidents within the previous 12 months;

iv. a person who has been under suspension, revocation or probation within the last five years by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle;

v. a person who has been convicted of any of the following misdemeanor offenses within the past five years: driving under the influence or reckless driving involving alcohol or reckless driving involving bodily injury;

vi. a person who has been convicted of any of the following offenses: a second or subsequent conviction for driving under the influence, or any felony conviction for driving under the influence (with or without injury), or vehicular manslaughter, or habitual traffic offender.

c. The following persons may not be involved in making deliveries:

i. any person who is required to register as a sex offender under Section 290 of the California Penal Code;

ii. any person who has within the past ten years been convicted of any felony offense involving moral turpitude.

d. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City's approval of the delivery service.

e. Persons involved in making deliveries may not be armed.

f. Delivery vehicles may not advertise any activity related to Cannabis, carry symbols or emblems related to Cannabis, or advertise the name of the Retailer.

g. Delivery of Cannabis shall be directly to the residence of the Customer unless said residence is in a park, school or hospital. Deliveries to parks, schools, hospitals, and all non-residential locations are prohibited.

h. Deliveries may occur only between the hours of 8:00 a.m. and 10:00 p.m.

i. Delivery vehicles shall not carry or transport at any one time an amount of Cannabis, Cannabis Products, cash and/or cash equivalents worth, in total, more than three thousand dollars (\$3,000).

j. All orders to be delivered shall be packaged by the name or identification number of the Customer for whom the delivery is intended.

k. The person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

l. All Retailers that provide delivery service shall maintain at all times Commercial General Liability insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

H. M-Retailers

1. M-Retailers must not admit any person without first verifying his or her status as a Qualified Patient or Primary Caregiver.

2. No physician recommendations for Medicinal Cannabis may be provided on site.

3. M-Retailers may not provide more Medicinal Cannabis to a Qualified Patient or Primary Caregiver than is necessary for the personal medicinal use of the Qualified Patient for whom the Medicinal Cannabis is intended, and may not dispense more Medicinal Cannabis to a Qualified Patient or Primary Caregiver per day than permitted by State law.

4. M-Retailers must take all practicable steps necessary to prevent and deter diversion of Medicinal Cannabis to any person who is not a Qualified Patient or Primary Caregiver. M-Retailers must limit access to Medicinal Cannabis to authorized personnel only. M-Retailers must maintain an inventory management system that accounts for all Medicinal Cannabis separately from Adult Use Cannabis if both types are sold or distributed at the Retailer.

5. M-Retailers must not admit any Qualified Patient under 18 years of age pursuant to MAUCRSA.

6. Medicinal Cannabis for low income persons

a. At least 2% (by weight) of the annual amount of Medicinal Cannabis in dried plant form provided by a M-Retailer to Qualified Patients and Primary Caregivers shall be provided at no cost to very low-income Qualified Patients who are Berkeley residents or their Primary Caregivers. This amount shall be calculated every six months, based on the amount dispensed during the immediately preceding six months. Medicinal Cannabis provided under this Section shall be the same quality on average as Medicinal Cannabis that is dispensed to other persons.

b. For purposes of this Section, income shall be verified using federal income tax returns or another reliable method approved by the City Manager.

c. For purposes of this Section, "very low income" shall mean the household income levels established by the U.S. Department of Housing and Urban Development.

d. M-Retailers shall keep an accurate roster of very low-income Qualified Patients who are Berkeley residents, which shall include a copy of either a California Medical Cannabis Identification Card or a physician's recommendation, and, if using a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such records shall be maintained in a manner that protects the confidentiality of the Qualified Patient and Primary Caregiver.

e. M-Retailers shall track distributions to very low-income Qualified Patients (or their Primary Caregivers) in an inventory management system compatible with the state Track-and-Trace program. M-Retailers shall generate a report every six (6) months showing the total percentage of Medicinal Cannabis sales distributed to Berkeley residents. If an M-Retailer voluntarily expands the program to residents outside of Berkeley, that percentage shall be calculated separately.

l. A-Retailers must not admit any person under 21 years of age. If an A-Retailer also holds an M-Retailer license, access to the M-Retailer portion of the establishment is subject to the requirements of subsection 12.22.040.H.

**J. ALTERNATIVE A: STAFF RECOMMENDATION – [Omitted]**

**J. ALTERNATIVE B: CHC RECOMMENDATION – Retailers may not sell, give away, barter, exchange or otherwise deal in the following items:**

- a. Flavored cannabis products designed for smoking or vaping.
- b. Cannabis-infused flavored beverages that mimic "alco-pops".
- c. Non-cannabis merchandise that is branded with cannabis-related products or businesses.

Section 4. That Berkeley Municipal Code Section 12.22.090 is amended to read as follows:

**12.22.090 Microbusinesses**

A. Microbusinesses must obtain separate City-issued operating permits for each activity conducted on the premises.

B. Microbusinesses are subject to the operating standards set forth in this Chapter for each activity conducted on the premises.

C. If the operating standards for the activities are different, the more restrictive standard shall apply, except as follows:

1. Signage for Retail Nursery Microbusinesses and Retail Storefront Microbusinesses shall be subject to the regulations for storefront Retailers.

D. If the operating permit for one of the activities is revoked, the entire Microbusiness must cease operation until all operating permits at the premises are reinstated.

Section 5: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 20 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTER 20.40

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 20.40.110 is amended to read as follows:

**Section 20.40.110 Permitted signs.**

A. Retailers that have a storefront and allow customer visits are allowed on-premises signs as set forth in BMC Chapter 20.24.

B. Delivery-~~o~~Only Retailers in C-prefixed districts are allowed business complex signs as set forth in BMC Section 20.16.070.

C. Delivery-Only Retailers in M-prefixed districts and Non-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32.

Section 2. That Berkeley Municipal Code Section 20.40.120 is amended to read as follows:

**Section 20.40.120 Number of signs permitted on premises.**

A. The number of on-premises signs for Cannabis Retailers are limited to BMC Section 20.24.030.

B. The number of on-premises signs for Cannabis non-retailers and Delivery-Only Retailers in M-prefixed districts are limited to BMC Section 20.32.030.

Section 3. That Berkeley Municipal Code Section 20.40.130 is amended to read as follows:

**Section 20.40.130 Sign area limitations.**

A. The sign area for all signs of Retailers that have a storefront shall not exceed seven and a half (7.5) percent of the building face of the premises or seventy-five (75) square feet, whichever is less.

B. The sign area for all signs of Delivery-~~o~~Only Retailers in C-prefixed districts are subject to BMC Section 20.16.070.

C. The sign area for all signs of Delivery-Only Retailers in M-prefixed districts and non-Retailers shall not exceed twelve (12) square feet.

D.

**ALTERNATIVE A: STAFF RECOMMENDATION** – Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs. A Cannabis Business that used a logo depicting cannabis or a cannabis product prior to the adoption of this ordinance, and was based in Berkeley prior

to 2020, is not subject to the requirements of this subsection and may continue to use the logo.

**D. ALTERNATIVE B: CC RECOMMENDATION –** ~~Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs. A Cannabis Business that used a logo depicting cannabis or a cannabis product prior to the adoption of this ordinance, and was based in Berkeley prior to 2020, is not subject to the requirements of this subsection and may continue to use the logo.~~

Section 4: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

REPEALING AND READOPTING BERKELEY MUNICIPAL CODE CHAPTER 23C.25  
TO MODIFY THE CANNABIS USES ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23C.25 is repealed and readopted to read as follows:

**Chapter 23C.25**

**Cannabis Uses**

**Sections:**

**23C.25.010 Retail Uses**

**23C.25.020 Cannabis Cultivation**

**23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

**23C.25.040 Microbusinesses**

**Section 23C.25.010 Cannabis Retail**

A. General

1. Cannabis Retailer, including Storefront Retailer, Delivery-Only Retailer, A-Retailer, and M-Retailer, is defined in Section 12.21.020.
2. An M-Retailer existing and authorized as of January 1, 2010 that does not comply with this Section may continue at its current medical cannabis dispensing location as a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary onto an adjacent parcel.
3. **ALTERNATIVE A: STAFF RECOMMENDATION - Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.**
3. **ALTERNATIVE B: CC RECOMMENDATION - ~~Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location.~~**

~~Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.~~

B. Storefront Retailers

1. Storefront Retailers are permitted in C-prefixed Districts with **either a Use Permit, or a Zoning Certificate if an Equity Candidate**, and must maintain compliance with Chapters 12.21 and 12.22 and security regulations that may be promulgated by the Chief of Police.
2. Storefront Retailers are subject to approval through the selection process set forth in Section 12.22.020.
3. Up to seven Storefront Retail permits may be issued, one of which is reserved for an Equity Candidate as defined in Section 12.21.020. This limit to the number of Storefront Retailers shall not be reconsidered for a period of three years from the effective date of this ordinance.
4. Expansion of an approved Storefront Retailer must comply with the development standards for the Zoning District in which it is located.
5. **Storefront Retailers may operate as a Retail Storefront Microbusiness as defined in Chapter 12.21 subject to obtaining all required State and local licenses.**
6. **ALTERNATIVE A: STAFF RECOMMENDATION - Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.**
6. **ALTERNATIVE B: CC RECOMMENDATION - Storefront Retailers may not be located within 600 feet of another Storefront Retailer or School.**
6. **ALTERNATIVE C: CHC RECOMMENDATION - Storefront Retailers may not be located within 1,000 feet of any School, junior college, university, daycare center, park, youth center or library.**
6. **ALTERNATIVE D: PC RECOMMENDATION - Buffers**
  - a. **Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.**
  - b. **Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.**

C. Delivery-Only Retailers



1. **ALTERNATIVE A: STAFF RECOMMENDATION** – Seven Delivery-Only Retailers are permitted citywide. All shall be operated by Equity Businesses.
  1. **ALTERNATIVE B: CC RECOMMENDATION** - Delivery-Only Retailers shall not be subject to a numeric limit.
  1. **ALTERNATIVE C: PC RECOMMENDATION** - 10 Delivery-Only Retailers are permitted citywide, and at least half of the businesses should be operated by Equity Businesses.
  1. **ALTERNATIVE D: CHC RECOMMENDATION** – Two Delivery-Only Retailers are permitted citywide. Both shall be operated by Equity Businesses.
  2. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
  3. Delivery-Only Retailers are permitted with a Zoning Certificate in C-prefixed Districts other than the C-N District.
  4. **ALTERNATIVE A: STAFF RECOMMENDATION** - Delivery-Only Retailers in M-prefixed Districts shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
  4. **ALTERNATIVE B: PC RECOMMENDATION** - Delivery-Only Retailers are permitted in the M District, shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
  5. Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
  6. Delivery-Only Retailers may not be located in a street-fronting tenant space in C-prefixed Districts.
- D. ALTERNATIVE A: STAFF RECOMMENDATION** - Lounges
1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.
  2. Lounges must comply with the operational standards established by the City’s Department of Health, Housing and Community Services.
- D. ALTERNATIVE B: CC RECOMMENDATION** – Lounges
1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit or as otherwise permitted under state law.
  2. Lounges must comply with the operational standards established by

the City’s Department of Health, Housing and Community Services.

**D. ALTERNATIVE C: CHC RECOMMENDATION - Lounges**

- 1. Lounges, as defined in Section 12.21.020, are prohibited.

**Section 23C.25.020 Commercial Cannabis Cultivation**

A. Commercial Cannabis Cultivation is defined in Chapter 12.21.

**B. ALTERNATIVE A: STAFF RECOMMENDATION -** Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M, **MM and MU-LI** Districts, subject to the following limitations:

**B. ALTERNATIVE B: PC and CHC RECOMMENDATION -** Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M District, subject to the following limitations:

- 1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.
- 2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.

C. The total citywide canopy area of Cannabis Cultivation Facilities is limited to 180,000 square feet.

- a. No more than six Major Cannabis Cultivation Facilities are permitted.
- b. The total canopy area of all Minor Cannabis Cultivation Facilities shall not exceed 48,000 sf plus any area not used by a Major Cannabis Cultivation Facility.
- c. Separate spaces used by different licensees may be aggregated at the same location.
- d. Commercial Cannabis Cultivation is prohibited outside of a building.

D. Cannabis Nurseries, as defined in Chapter 12.21, are subject to the same regulations as Cannabis Cultivation Facilities.

E. Cannabis Cultivation Facilities shall comply with all regulations in Chapter 12.22, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

**F. Cannabis Cultivation Facilities may not be located within the distances from sensitive uses listed in the table below:**

District	Sensitive Uses	Buffer
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M	Schools or City-operated community centers or skate parks	300 feet
MM	<b>Schools or City-operated community centers or skate parks</b>	<b>600 feet</b>
	<b>R-prefixed district</b>	<b>300 feet (may be reduced with a Use Permit)</b>
MU-LI	<b>Schools or City-operated community centers or skate parks</b>	<b>600 feet</b>
	<b>R-prefixed district</b>	<b>300 feet (may be reduced with a Use Permit)</b>

- G. No Major Cannabis Cultivation Facilities may be approved until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers.

**Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

- A. Cannabis Manufacturers, Testing Labs and Distributors shall be evaluated and regulated for Zoning purposes in the same way as comparable non-Cannabis uses, as follows:

<b>Cannabis Use</b>	<b>Equivalent Non-Cannabis Use</b>
Manufacturing, processing, food Preparation	Light Manufacturing
Testing labs	Testing Labs
Distribution	Wholesale Uses

- B. Cannabis Manufacturers, Testing Labs and Distributors may not be located within 300 feet of a School.

**Section 23C.25.040 Microbusinesses**

- A. Microbusinesses are defined in Chapter 12.21.
- B. Microbusinesses are subject to the development standards set forth in this Chapter for each use conducted on the premises, with the following exceptions:
- C. In cases where development standards and permit thresholds apply for different uses conducted on the premises differ, the more restrictive standards apply.
- D. Retail Nursery Microbusinesses
  - 1. For purposes of this Section, “Existing Nursery” means a legally established plant nursery in the City of Berkeley as of the adoption of this ordinance.
  - 2. Up to two Existing Nurseries may convert to Retail Nursery Microbusiness, either: 1) with a Zoning Certificate in C- and M-prefixed Districts if an Existing Nursery complies with the development standards set forth in the Zoning Ordinance and in this Chapter for each use conducted on the premises; or 2) subject to a Use Permit for the substantial expansion or change in character to non-conforming uses in R-prefixed Districts. Retail Nursery Microbusinesses are not subject to the numeric or canopy limitations of other Retailers or Cannabis Cultivators.
  - 3. Zoning Certificates and/or Use Permits shall be issued to Existing Nurseries on a first-come, first-served basis. The right to retain one of the allocated Zoning Certificates shall be determined based on the date of issuance of a concurrent Business License and establishing and continuously operating the business or, if a Use Permit is required, on the date the application for the Use Permit is deemed complete so long as the Use Permit is implemented with a Businesses License within 30 days of approval and establishing and continuously operating the business.
  - 4. The 600-foot buffer required between Cannabis Retailers shall not apply between Storefront Cannabis Retailers and Retail Nursery Microbusinesses.

Section 2: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## ORDINANCE NO. -N.S.

## AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23E TO MODIFY USE TABLES RELATED TO CANNABIS USES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the "Retail Sales" section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park

Use	Classification	Special Requirements (if any)
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<p><u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p>

Section 2. That the “Retail Sales” section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals

Use	Classification	Special Requirements (if any)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u>  <u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u>



Section 3. That the “Retail Sales” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.48.030 C-Ns North Shattuck Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of	UP(PH)	

Use	Classification	Special Requirements (if any)
Animals (but not Boarding)		
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u>  <u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u>

Section 4. That the “Retail Sales” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses**

**Permitted**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<u>ZC shall only be considered after business is approved through a selection process</u>

Use	Classification	Special Requirements (if any)
		<p><u>approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p>

Section 5. That the “Retail Sales” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title <a href="#">23F</a> , except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section <a href="#">11364.5(d)</a>
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<a href="#">Delivery-Only Retailer</a>	<a href="#">ZC</a>	<a href="#">ZC shall only be considered after business is approved through a selection process</a>

Use	Classification	Special Requirements (if any)
		<a href="#">approved by the City Council per BMC Section 12.22.020.</a>  <a href="#">Subject to restrictions on the ground floor; see Section 23C.25.010.</a>

Section 6. That the “Retail Sales” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.

Use	Classification	Special Requirements (if any)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u>  <u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u>

Section 7. That the “Retail Sales” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses**

**Permitted**

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Retail Sales				
Retail uses as defined in Sub-title <a href="#">23F</a> , except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH)*	*Except when part of a combination commercial/residential use; see Mixed Use Development heading
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)			Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)			Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)			
Smoke Shops	UP(PH)			Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC			ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>



Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<p><u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p>

Section 8. That the “Retail Sales” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.68.030 C-DMU Downtown Mixed Use District Provisions: Uses Permitted**

Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title <a href="#">23F</a> , except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>
<u>Delivery-Only Retailer</u>	<u>ZC</u>	<u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u>

Use	Classification	Special Requirements
		<u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u>

Section 9: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23F TO ADD AND MODIFY RELATED TO CANNABIS USES; AMENDING CHAPTER 23F.04

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23F.04 is amended to revise the definitions of “Microbusiness” and “Warehouse Based Non-Store Retail” as follows:

**Chapter 23F.04  
Definitions**

**Sections:**

**23F.04.010 Definitions**

**Microbusiness:** Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.

**Retail Nursery Microbusiness:** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.

**Retail Storefront Microbusiness:** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See BMC Chapter 12.21 for definition and limitations.

**ALTERNATIVE A: STAFF RECOMMENDATION - Warehouse Based Non-Store Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in M-prefixed districts.

**ALTERNATIVE B: PC RECOMMENDATION - Warehouse Based Non-Store Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in the Manufacturing (M) District.

Section 2: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

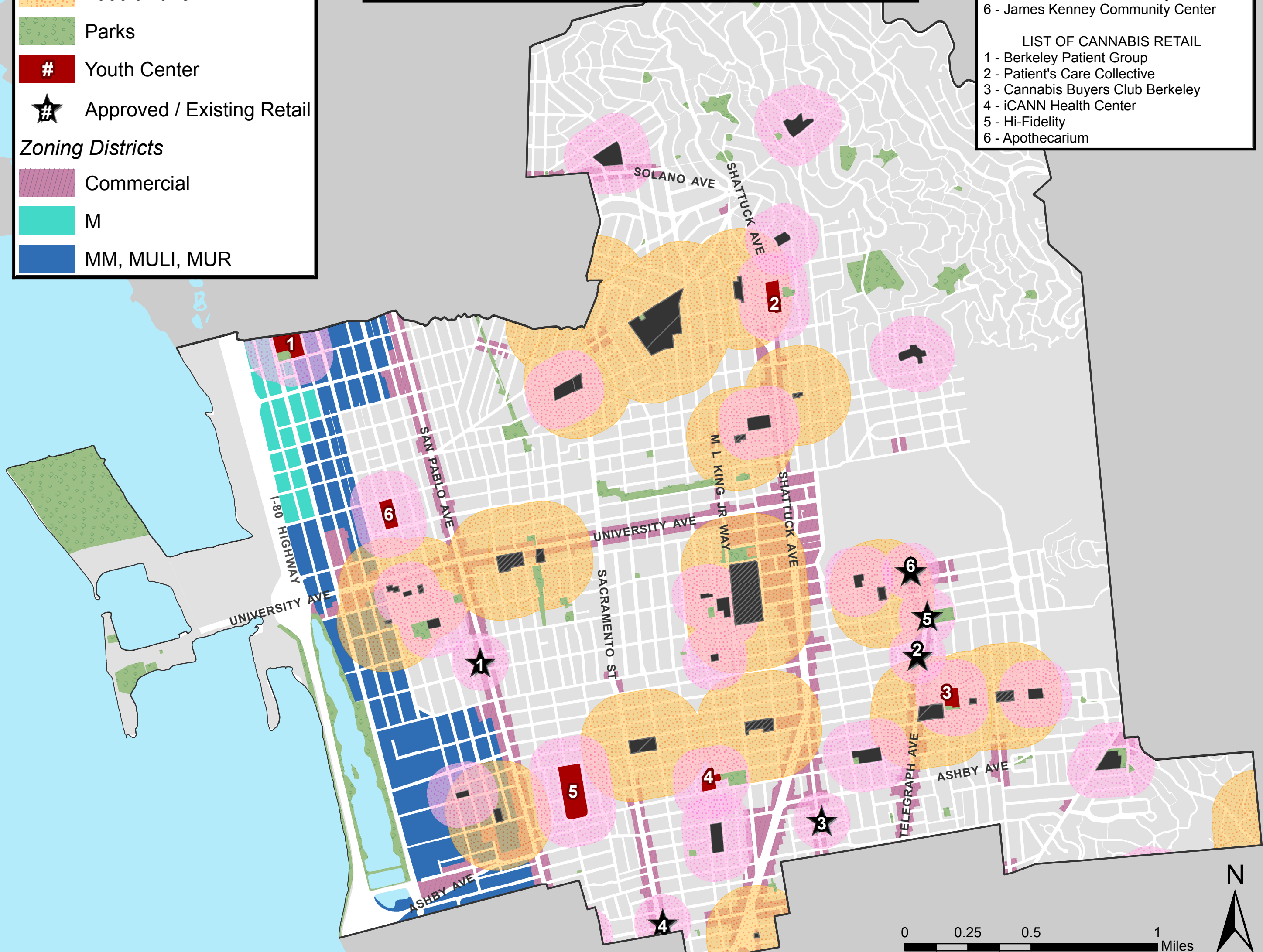
### Alternative A: 1000ft Buffer of Middle and High Schools 600ft Buffer of K-6 Schools, Retail, and Youth Centers

- School Parcels
- 600ft Buffer
- 1000ft Buffer
- Parks
- # Youth Center
- ★ Approved / Existing Retail

**Zoning Districts**

- Commercial
- M
- MM, MULI, MUR

- LIST OF YOUTH CENTERS**
- 1 - Berkeley Skate Park
  - 2 - A World of Peace After School Program
  - 3 - Willard School/Park
  - 4 - MLK Jr. Youth Services Center
  - 5 - Frances Albrier Community Center
  - 6 - James Kenney Community Center
- LIST OF CANNABIS RETAIL**
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium





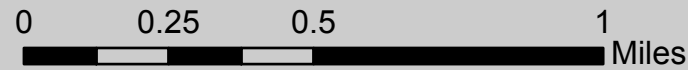
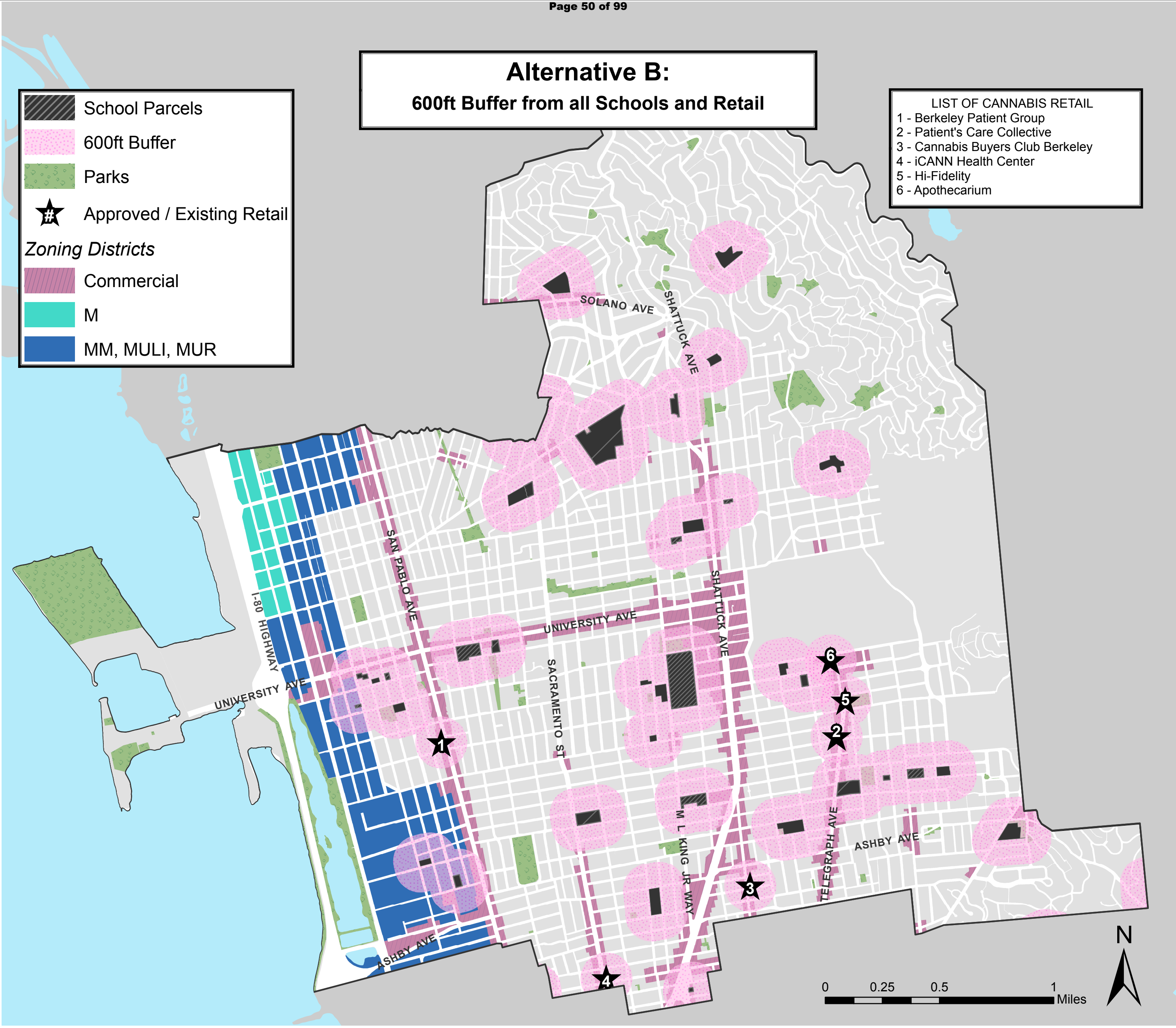
# Alternative B: 600ft Buffer from all Schools and Retail

- LIST OF CANNABIS RETAIL
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium

- School Parcels
- 600ft Buffer
- Parks
- Approved / Existing Retail

**Zoning Districts**








- Commercial
- M
- MM, MULI, MUR








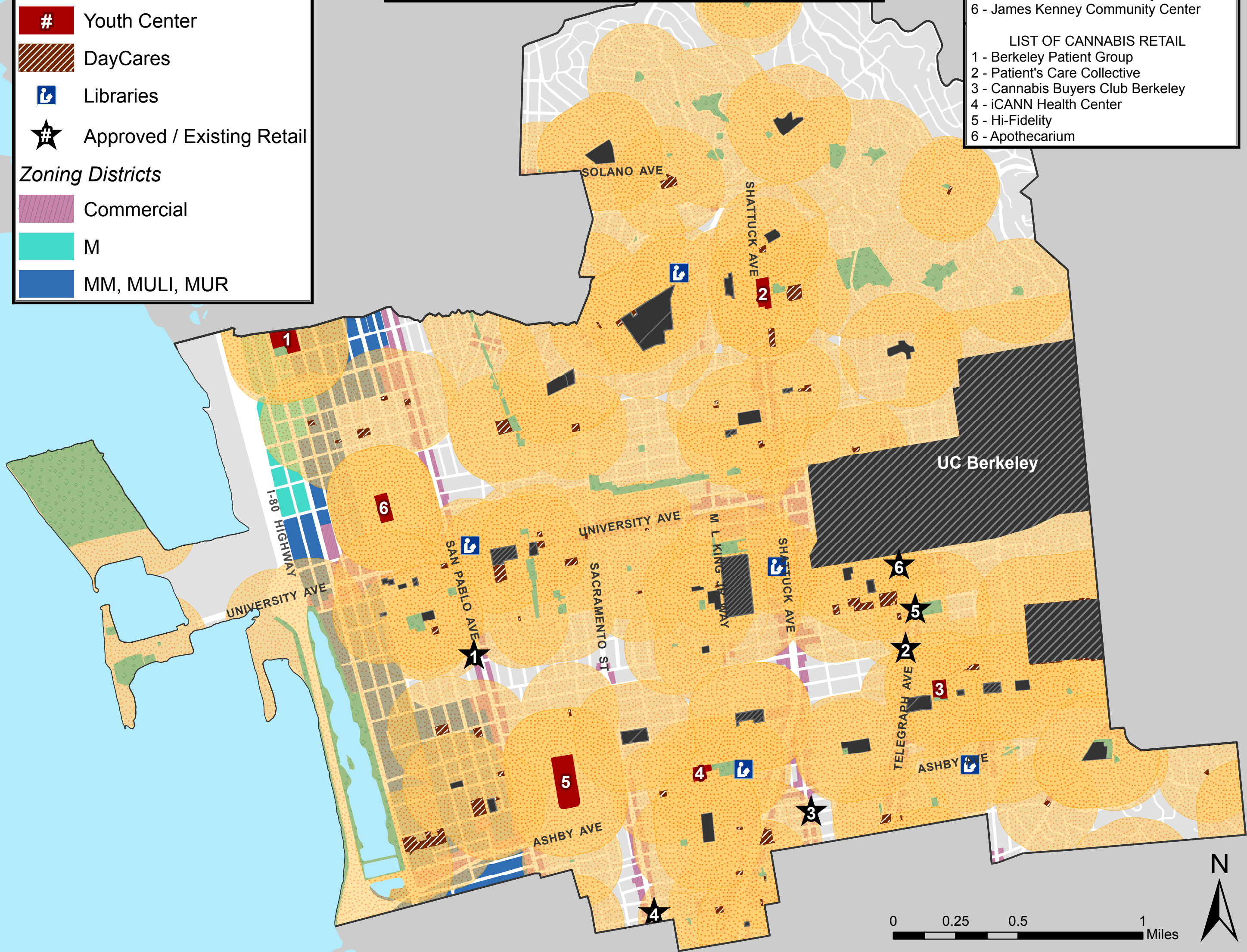
# Alternative C: 1000ft Buffer of Schools, Youth Centers, Parks, Libraries, and Daycares

- LIST OF YOUTH CENTERS**
- 1 - Berkeley Skate Park
  - 2 - A World of Peace After School Program
  - 3 - Willard School/Park
  - 4 - MLK Jr. Youth Services Center
  - 5 - Frances Albrier Community Center
  - 6 - James Kenney Community Center
- LIST OF CANNABIS RETAIL**
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium

-  School & UCB Parcels
-  1000 Foot Buffer
-  Parks
-  Youth Center
-  DayCares
-  Libraries
-  Approved / Existing Retail

**Zoning Districts**

-  Commercial
-  M
-  MM, MULI, MUR



**MINUTES FROM THE CANNABIS, COMMUNITY HEALTH AND  
PLANNING COMMISSION RELATED TO PROPOSED CANNABIS  
ORDINANCES**

**CANNABIS COMMISSION**

**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING  
JUNE 6, 2019  
(Partial)**

**A. Work Program**

Public Comment: None

The Commission briefly discussed the proposed work plan, generally, and specifically discussed how the unregulated market could be accurately studied (Strategic Area 3) and what the proposed public education program would include (Strategic Area 4)

Motion/second to approve the Work Program (Poindexter/Malmuth). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

**B. Cannabis Ordinance Changes**

Public Comment: One comment requesting the status of the five Ordinance elements voted on by Council. Staff informed speaker that they were all adopted.

Commissioners Poindexter and Lardner led a discussion of proposed changes to the Cannabis Ordinance recommended to the Commission at the May 23, 2019 Ordinance Review Subcommittee meeting. Individual items were discussed as outlined below:

Item 8. Microbusinesses

The Commission discussed the restrictions on Retail Storefront Microbusinesses, and concerns from one retail to allow more manufacturing options. Staff explained that the currently proposal restricting the manufacturing component to repackaging will not be permitted by the State. Other options were discussed, including permitting Retailers to have incidental manufacturing with a Zoning Certificate rather than an Administrative Use Permit. Staff will study the options for manufacturing and distribution and bring options to the July meeting.

Item 1. Delivery-Only Retailers



Commissioners discussed in what zoning districts Delivery-Only Retailers would be permitted, what type of land use approvals would be required for their operation, and whether there should be a limit on the total number of Delivery-Only Retailers in the City of Berkeley. The Commission decided to permit Delivery-Only Retailers in C-prefixed districts, except the C-N, and in M-prefixed districts. They decided against recommending a quota of Delivery-Only Retailers.

Motion/second to amend Alternative #1 to read “Cannabis Delivery-Only Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones, except for C-N, and in M-prefixed zones if they comply with the parking requirements and any security requirements promulgated by the Chief of Police.” (Lardner/Poindexter). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 2: Consumption Lounges

Commissioners discussed how to permit consumption lounges not connected to dispensary/sales. State law appears to currently prohibit that arrangement but may permit such an arrangement in the future

Motion/second to permit Lounges in retailers with a Use Permit “or as otherwise authorized under state law.” (Cooper/Malmuth) The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 3: Retail Buffers

Commissioners briefly discussed proposals for buffers between Retailers, parks and K-12 schools, ranging from 600 feet to 1,000 feet.

Motion/second to adopt proposed Alternative A “Retailers may not be located within 600 feet of another Retailer or public or private elementary school, middle school or High School.” (Cooper/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 4: Discretion for Businesses:

Commissioners briefly discussed the proposed number of total dispensaries. Commission expressed that there should be more than one equity applicant.

Motion/second to accept proposed language of a cap of seven Cannabis Retailers. (Lardner/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 5: Cultivation Beyond the M District

Commissioners discussed whether to permit cultivation in the MM and MU-LI zoning districts. Commissioners also discussed proposed buffers between Cannabis Nurseries and schools or residential districts. Commissioners discussed whether to add outdoor cultivation.

Motion/second to expand cultivation to the MM and MU-LI zoning district, strike the prohibition of outdoor cultivation in 23C.25.020(A)(6) and accept buffer language as proposed. (Lardner/Cooper) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 6: Signage

Commissioners discussed limitations on cannabis-related imagery in store signage.

Commissioners postponed deliberation of Items 6 – 10 of the Ordinance Review Subcommittee report to the next meeting of the Cannabis Commission.

Secretary Greene requested that Commissioners review the recommendations of the Community Health Commission and come to the next meeting prepared to offer general policy direction.

**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING  
JULY 11, 2019  
(Partial)**

**IV. Discussion and Action Items**

**A. Discuss proposed changes by staff to the Cannabis Ordinance**

City staff provided commission members with a series of topics to facilitate discussion regarding the proposed cannabis ordinance. Secretary Greene reviewed of changes made since the last Cannabis Commission meeting. Language throughout the Zoning Ordinance was changed to make it easier to use, and most did not change policy direction. The only changes to policy direction relate to Delivery-Only Retailers and Storefront Microbusinesses. Staff recommended changing the recommendation for Delivery-only Retailers in M-prefixed districts to match Warehouse based Non-Store Retailers, since it would be a very similar use.

In regards to Storefront Microbusiness, staff recommends changing the manufacturing component from repackaging only (Type P License) to repackaging and infusions (Type N) to align with state regulations.

Overall, staff reported that new definitions presented to the committee add clarification to allow people to more easily distinguish between business types.

**Public Comment:**

Four comments. The draft language references BMC sections that don't exist – staff clarified that City Council approved language for the municipal code in May, but the information has not been updated on the City's website. The public expressed concerns that manufacturers would not be able to add delivery-only retail to their business by right, and concern that restrictions on ground floor delivery-only Retailers would conflict with ADA regulations. There should not be a finite number of dispensaries because it will limit retailers, and signage restrictions may leave a select number of retailers at a disadvantage. Finally, there was a question about the possibility of getting a microbusiness license but not operating as one.

*Delivery-only Retailers (D-oRs)*

Quotas: Commission members discussed whether quotas should exist for D-oRs. There was discussion around setting a quota to give people something to react to. However, commissioners determined that quotas are restrictive and would prefer to let the market decide the number of D-oRs in

Berkeley. The need to allow D-oRs to locate within Berkeley was also emphasized during the discussion.

Motion/second to agree that no quota will be set by the committee for D-oRs (Cooper/Poindexter). The motion carried 4-0-1-2. (Ayes: Cooper, Poindexter, An, Lardner. Noes: None. Abstain: Cable. Absent: Svec-Burdick, Malmuth.)

Buffers and ground floor restrictions: Agreed with staff recommendations.

D-oRs in Manufacturing districts: The commission agreed with current staff recommendation.

#### *Discretion for Businesses*

##### Non-Equity Storefront Retailers

Staff explained that the updates to this sections would allow the selection process to be moved forward through a Use Permit instead of going through council. The commissioners agreed with staff recommendation.

#### *Signage*

Signage for D-oRs in Manufacturing districts: The commission agreed with staff recommendation to treat D-oR signage in M areas like manufacturing uses.

Depictions of cannabis: The commission expressed that since the public has approved the legalization of cannabis, then depictions of cannabis should not be prohibited on business signs.

#### *Change in Location*

Good standing requirement: The Commission recommended removing 23C.25.010.A from the ordinance.

#### *Retail Storefront Microbusiness*

Should these be different from other Microbusinesses: Staff explained that updates made to this section are geared towards treating these retail types similar to other existing retailers with similar business practices. Overall, the commission agreed that the updates seem to allow more flexibility to microbusinesses, but within limits. The commission agreed with staff recommendation.

#### *CHC Recommendations*

The Cannabis Commission did not agree with recommendations from CHC and would like to add an agenda item to the next Cannabis Commission

meeting to write a memo to Council addressing reasoning behind opposition.

- It
- Motion/second to agree with the 7-11-19 staff recommendations with the following exceptions:
1. No quota for D-oRs (23C.25.010.C.1);
  2. No restrictions on depictions of cannabis on signs, including logos (20.40.110);
  3. Remove restriction on changing locations (23C.25.130);
  4. Allow D-oRs in C districts (except C-N) with a ZC (23C.25.010.3, Alternative A);
  5. Allow Lounges with Storefront Retailers with a Use Permit “or as otherwise permitted under state law” (23C.25.010.D);
  6. Maintain the current buffers for Storefront Retailers (23C.25.010.C.3, Alternative A); and
  7. Expand Cultivation into the MM and MU-LI and strike the prohibition on outdoor commercial cultivation (23.25.020) (Poindexter/Lardner). The motion carried 5-0-0-2. (Ayes: Cooper, Cable, Poindexter, An, Lardner. Noes: None. Abstain: None. Absent: Svec-Burdick, Malmuth.)

## COMMUNITY HEALTH COMMISSION

### APPROVED MINUTES OF THE COMMUNITY HEALTH COMMISSION MEETING JULY 25, 2019 (Partial)

2. M/S/C (Rojas-Cheatham/Rosales): Motion to support the ban of cannabis consumption lounges and elimination of paragraph 2 (City Council recommendation clause if item were to pass) in the City of Berkeley.

**Ayes:** Commissioners Speich, Gilman, Rojas-Cheatham, Simpson, Rosales, Le, Katz.

**Noes:** Commissioners Futoran, Webber.

**Abstain:** Commissioners Smart, Spigner.

**Absent from vote:** None.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

3. M/S/C (Gilman/Rosales): Motion to support the ban of branded cannabis merchandise with recommended amendments (technical edit [678f.sup.2d512](#) after U.S. common law in 4<sup>th</sup> paragraph) in the City of Berkeley.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

4. M/S/C (Simpson/Spigner): Motion to extend the Community Health Commission meeting to 9:10PM.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham. Community Health Commission

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

5. M/S/C (Gilman/Futoran): Motion to support the sales ban of flavored cannabis products for smoking or vaping, and the sales of cannabis infused beverages that mimic alcopops in the City of Berkeley.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham, Katz.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

6. M/S/C (Rosales/Smart): Motion to ban the expansion of cannabis cultivation outside the M district in the City of Berkeley.

**Ayes:** Commissioners Webber, Smart, Gilman, Simpson, Rosales, Le.

**Noes:** None

**Abstain:** Futoran, Spigner.

**Absent from vote:** Commissioner Rojas-Cheatham, Katz.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

**APPROVED MINUTES OF THE COMMUNITY HEALTH COMMISSION  
MEETING  
SEPTEMBER 26, 2019  
(Partial)**

1. M/S/C (Rojas-Cheatham/Webber): Motion to prohibit cannabis products that are attractive to youth. A cannabis product that are, or are manufactured or packaged and designed to be, attractive to individuals under the age of 21, including but not limited to: 1. Cartoon likeness; 2. Any likeness to images, characters, or phrases that are popularly used to advertise to children; 3. Any imitation of candy packaging or labeling; 4. The terms “candy” or “candies”. 5. Any cannabis product or packaging the City determines, on a case-by-case basis, is attractive to children.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Rojas-Cheatham, Imai, Rosales

**Motion Passed.**

2. M/S/C (Smart/Rosales): Motion to recommend that City Council have a quota of 2 candidates for the delivery-only retailer quote, both equity candidates.

**Ayes:** Commissioners Speich, Carter, Smart, Gilman, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** Commissioner Webber

**Abstain:** Commissioner Spigner

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**



3. M/S/C (Speich/Webber): Motion to recommend the prohibition of signage that includes depiction of cannabis or cannabis products or logos.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

4. M/S/C (Webber/Speich): Motion recommending that retail store fronts may not be located within 1000 feet of a school, junior college, university, daycare center, park, youth center, or library.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

5. M/S/C (Speich/Katz): Motion extending meeting to 9:30PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioners Rojas-Cheatham, Imai

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

6. M/S/C (Speich/Rosales): Motion extending meeting to 9:45PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioner Rojas-Cheatham

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

7. M/S/C (Katz/Gilman): Motion to approve the flyer and warning sign requirement which will incorporate the proposed language and authorize the chair to forward to staff and city council the additional comments from Professor Constantine as an appendix. Including the three warning signs: 1) Are you an immigrant? Are you on probation or parole? 3) Are you a medical cannabis customer?

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioner Spigner

**Absent from vote:** Commissioner Rojas-Cheatham

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

8. M/S/C (Simpson/Katz): Motion to extend meeting to 9:50PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

9. M/S/C (Katz/Webber): Motion to recommend City Council to fund public health campaigns to do cannabis education.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Rosales, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham, Imai, Le

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

10. M/S/C (Katz/Gilman): Motion to approve recommendations as corrected—to substitute or update the word smoking to be replaced with consumption—and to approve recommendations (communication) to the city council regarding cannabis ordinance 2.0.

**Ayes:** Commissioners Carter, Gilman, Spigner, Simpson, Rosales, Katz, Narahari

**Noes:** None

**Abstain:** Commissioners Speich, Webber, Smart

**Absent from vote:** Commissioner Rojas-Cheatham, Imai, Le

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

## PLANNING COMMISSION

### FINAL MINUTES OF THE PLANNING COMMISSION MEETING JULY 17, 2019 (Partial)

#### 11. Action: Public Hearing on Comprehensive Cannabis

Staff presented on the latest iteration of comprehensive cannabis program options. As part of their presentation, Staff asked the Planning Commission to provide recommendations on zoning amendment considerations that focus on the following: storefront retail buffers, lounges (commercial consumption), the expansion of cultivation beyond the Manufacturing zoning district (M), microbusinesses as storefront retailers, the operation of delivery-only retailers, and other minute definition changes. The Commission discussed aspects of the proposed amendments, but continued the discussion on most aspects of delivery-only services to the September 4, 2019 hearing to allow for more time for community input.

#### Public Comments: 3

Motion/Second/Carried (Sharenko /Kapla) to apply the existing cannabis retail buffer to the new equity candidate and apply staff's recommended buffer (600 feet from elementary schools, community centers and other Storefront Retailers, and 1,000 feet from middle and high schools) to all new cannabis retail business that enter the market thereafter; to support staff's recommendation concerning commercial consumption lounges, microbusinesses, and incidental distribution operations; and to oppose the expansion of cultivation and delivery-only uses into the MM and MU-LI zoning districts. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Kay/Fong) to re-notice a public hearing on delivery-only retailers, focusing on quotas, discretionary process, location, and buffer size. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Schildt/Sharenko) to appoint Commissioner Lacey to draft a letter to the City Council on behalf of the Planning Commission, explaining the reasoning of their recommendation to oppose the expansion of cultivation and delivery only uses into the MM and MU-LI zoning districts. Ayes: Beach, Fong,

Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Schildt/ Fong) to close the public hearing for item 11. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Martinot, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

## **FINAL MINUTES OF THE PLANNING COMMISSION MEETING SEPTEMBER 4, 2019 (Partial)**

### **9. Action: Public Hearing: Zoning Ordinance Amendments for Cannabis Uses: Delivery-Only Retailers**

Planning Commission held a public hearing to discuss Zoning Ordinance amendments for cannabis delivery services. Planning Commission considered proposed amendments to establish new land use regulations for cannabis retail delivery services (Delivery-Only Retailers). Planning Commission also considered vertically integrated cannabis businesses (Microbusinesses) that involve Delivery-Only Retail in their recommendation. The Commission discussed the presence of existing similar delivery-only services in Berkeley and the appropriate number, locations (within a building and allowable zoning districts), discretion and criteria for Delivery-Only Retailers.

#### **Public Comments: 5**

Motion/Second/Carried (Schildt/Wrenn) to recommend that the City Council adopt the staff proposed language, as amended, which includes the following provisions, in Section 23C.25.010 Cannabis Retail:

- Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
- Delivery-Only Retailers are permitted with a Zoning Certificate in the M District and C-prefixed districts other than the C-N District.
- Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
- Delivery-Only Retailers may not be located on the street fronting portion of the ground floor in a C-prefixed district.
- Implement a city-wide quota of 10 Delivery-Only Retailers, where at least half are equity candidates.
- All delivery-only retailers shall be permitted with a Zoning Certificate in all allowable zoning districts.
- Delivery-Only Retailers in the M District shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and

shall be subject to the same numeric and buffer requirements as Delivery-Only Retailers in C-prefixed districts.

Ayes: Beach, Lacey, Martinot, Schildt, and Wrenn. Noes: Vincent and Wiblin.  
Abstain: None. Absent: Fong and Kapla. (5-2-0-2)

Motion/Second/Carried (Beach /Wrenn) to close the public hearing at 9:32pm.  
Ayes: Beach, Lacey, Martinot, Schildt, Vincent, Wiblin, and Wrenn. Noes: None.  
Abstain: None. Absent: Fong and Kapla. (7-0-0-2)

To: Honorable Mayor and Members of the City Council

From: Cannabis Commission

Submitted by: Commission Chair Ezra Malmuth

Subject: Berkeley Cannabis Equity Program and Ordinance Changes

This letter is to notify the City Council of the Cannabis Commission recommendations for the Cannabis Equity Program and Cannabis Ordinance changes that are being considered.

The City of Berkeley is known for championing social justice. The city took the unique step of becoming a cannabis sanctuary city, as a declaration that the War on Drugs and its racist legacy have no place here. We are one of a handful of cities and states that made equity a stated goal in our legal cannabis market.

However, to achieve this goal, we need thoughtful followthrough on policy. While Berkeley has provided a safe place for cannabis businesses to exist, it has also created a high barrier to entry. Establishing a cannabis business here can be a herculean task, due to restrictive zoning criteria, scarce available real estate, and the lengthy and costly licensing process.

Since legalization, it's become clear that existing cannabis businesses are struggling to compete against the thriving unregulated market and the restrictions which have been imposed on existing businesses are making it harder for them to see a sustainable path forward.

This provides a discouraging landscape for a cannabis equity programs to flourish and become an integral part of Berkeley's efforts to give back to the communities adversely affected by the War on Drugs, particularly people of color. Building a successful equity program entails both a hard look at the challenges facing all cannabis businesses in Berkeley and the current limited scope of the program.

The Cannabis Commission believes limiting the equity program to a single storefront retailer will seriously hinder our city's ability to have a real impact on ameliorating the harms caused by the War on Drugs -- it may, in fact, only help one person. Berkeley should expand equity opportunities to more license types, and broaden opportunities for people outside of ownership groups to employees and other members of impacted communities.

We share the goals and ideals put forth by the council and have some suggestions that leverage our expertise on how Berkeley can support the first equity retailer and also assist in the development of a new workforce for this emerging industry.

We see the first retail storefront as a small first step, but we also believe there is a much larger community which deserves opportunities it has historically been denied.

### **Proposing a workforce development program for all equity candidates**

While ownership is a critical piece of any equity model, it cannot be the only piece. Incarceration has denied millions of people, not just the opportunity to build generational wealth, but a chance to even gain a foothold in the employment market. Many employers who are sympathetic to the plight of those convicted of crimes under the War on Drugs may be reticent to hire someone with a criminal record and limited work experience. It is imperative we meet the needs of both employers and potential employees through a process that results in the successful employment of an equity candidate.

Therefore, we propose a workforce development program in which the city of Berkeley would reimburse cannabis employers for up to 160 hours at city minimum wages paid to qualified equity employees. This would create a low-risk period in which the employee can earn a living and also receive valuable on the job training. This work experience will make candidates more employable in future jobs.

The program would be affordable, and costs could be contained in any number of ways, such as restricting how many employees or how many hours per year a cannabis business could use this program. For example, allowing each retailer to use this program for three employees for 160 hours at Berkeley's current minimum wage of \$15.59 would cost the city \$7,483.20 per retailer or \$52,382.40 for the seven retailers. For comparison revenue generated by business license tax for Fiscal Year 2019 was \$1,809,820 from cannabis businesses alone.<sup>1</sup> The city should also consider possible expansions of the program to allow equity retailers greater use of the program, and to allow all cannabis businesses, not just retailers, to make use of this program.

We see this as an affordable, easy to administer program that promotes equity and wellbeing in both the short and long term. Furthermore, if successful, it could serve as a model for part of a broader equity program, both for Berkeley and around the nation.

While we also support general job training programs, they often require federal dollars, which are unavailable for cannabis businesses. Even when equity candidates are able to participate in job training, they are forced to compete on the same playing field with other potential employees who have not had their life trajectory upended by the War on Drugs.

### **Cannabis Ordinance Changes**

The Cannabis Commission has reviewed City staff's proposed changes to the cannabis ordinance. While we agree with much of the language suggested, we have some recommendations outlined in the following matrix.

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<sup>1</sup> Figure provided by Berkeley Planning Department staff



Issue	Current Language / City Staff Recommendation	Commission Recommendation	Reasoning	Relevant portion of code
Quotas for Delivery Only Retailers (D-o-Rs)	The ordinance currently does not have a mandate on the number of D-o-R who can locate in Berkeley	There should be no quota on D-o-Rs	<ul style="list-style-type: none"> <li>– A quota would pull business, employment opportunities, and tax dollars out of Berkeley.</li> <li>– DoR have minimal impact in terms of foot traffic, visible presence of cannabis, smell, parking, etc.</li> </ul>	(23C.25.010.C.1)
Zoning for Delivery Only Retailers	City staff's current recommendation is to permit D-o-Rs with a Zoning certificate in C-prefixed Districts other than the C-N District	Allow D-oRs in C districts (except C-N) with a Zoning Certificate	<ul style="list-style-type: none"> <li>– Commission is supportive of D-o-R's requiring a Zoning Certificate.</li> <li>– D-oRs should not be required to go through the arduous process of obtaining an Administrative Use Permit, because these businesses will have little land use impact on the community, are required to be 600 feet away from schools, and are already required to have adequate security measures.</li> </ul>	(23C.25.010.3, Alternative A)
Depictions of cannabis on Business front signs	Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.	There should be no restrictions on depictions of cannabis or cannabis products on signs, including logos	<ul style="list-style-type: none"> <li>– There are long established Berkeley cannabis businesses depicting a cannabis leaf on their logos. They should not have to change their logos now.</li> <li>– Limiting exposure exoticizes cannabis in an unproductive way.</li> </ul>	(20.40.110)

			<ul style="list-style-type: none"> <li>– We are a sanctuary city for cannabis, and we shouldn't restrict the image of cannabis.</li> </ul>	
Changing locations	<p>City staff has recommended the following:</p> <p>"Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at that time.</p>	Remove restriction on changing locations	<ul style="list-style-type: none"> <li>– The proposed process to relocate is almost starting from scratch when these businesses have already established themselves with the city and are already up to code.</li> <li>– Any other business can move locations subject to zoning requirements.</li> </ul>	(23C.25.010.A)
Cannabis Lounges permitting	<p>Currently, the ordinance does not include language on allowing Cannabis Lounges in the city. City staff has recommended the following:</p> <p>A Lounge, as defined in Section 12.21.020 may be permitted at an approved Retailer subject to approval of a Use Permit. Lounges must comply with the operational standards established by the City's Department of Public Health, Housing and Community Services.</p>	Allow Lounges with Storefront Retailers with a Use Permit "or as otherwise permitted under state law	<ul style="list-style-type: none"> <li>– Many Berkeley residents live in housing situations which restrict their ability to consume cannabis and therefore do not have an accessible space to consume safely. Developing cannabis lounges in our city will allow all Berkeley residents to consume cannabis safely.</li> <li>– Cannabis lounges will also help to reduce public consumption.</li> <li>– Lounges can be a place of community,</li> </ul>	(23C.25.010.D)

			safety, and expression for cannabis consumers and patients.	
Buffers on Storefront Retailers	<p>City staff put forth the following recommendation:</p> <p>Retailers may not locate with 600 feet of another retailer or school</p>	Maintain the current buffers for Storefront Retailers	<p>– The current buffers are not creating issues.</p> <p>– There are already zoning restrictions on cannabis and increasing them will severely limit the already limited space where cannabis businesses are permitted in the city.</p>	(23C.25.010. C.3, Alternative A)
Cultivation Zoning and Outdoor Cultivation	<p>City Staff has put forth the following recommendations:</p> <p>"Commercial Cannabis Cultivation with a Zoning Certificate in the M, MM, and MU-LI Districts"</p>	Expand Cultivation into the MM and MU-LI and strike the prohibition on outdoor commercial cultivation	<p>– Restricting cultivation businesses to the M district alone severely limits the space where they can be located, which has resulted in zero business applications.</p> <p>– Concerns within the neighborhood can be addressed on a case by case basis, but a blanket ban on outdoor cultivation does not make sense.</p> <p>– It is much more environmentally sustainable to cultivate outdoors than indoors where businesses must replicate the sun with lamps.</p>	(23.25.020)



Community Health  
Commission

## COMMUNICATION TO COUNCIL

Date: September 26, 2019  
To: Mayor and Members of the City Council  
From: May Simpson, Chair, Community Health Commission  
Subject: A Public Health Approach to Proposed Round 2 Cannabis Ordinances

This letter addresses public health issues related to the Proposed Round 2 Cannabis Ordinance that the City Council is currently considering. Attached to this letter is a copy of a prior letter from the Community Health Commission, entitled “A Public Health Approach to the Proposed Cannabis Ordinances(s)” that was submitted to the Mayor and Members of the City Council, dated September 13, 2018. The concerns raised in that prior letter remain valid. However, the letter submitted at this time will focus on the issues currently before the council.

### **September 26, 2019 Community Health Commission Regular Meeting:**

**Action:** M/S/C (Katz/Gilman) Motion to approve recommendations as corrected—to substitute or update the word smoking to be replaced with consumption—and to approve recommendations (communication) to the city council regarding cannabis ordinance 2.0.

**Vote:** **Ayes:** Carter, Gilman, Spigner, Simpson, Rosales, Katz, Narahari; **Noes:** None; **Abstain:** Speich, Webber, Smart; **Absent:** Rojas-Cheatham, Imai, Le; **Excused:** Engelman, Futoran

### **1. Regarding Proposals for Public Consumption Lounges:**

Due to 1) the respiratory consequences of inhaling second hand marijuana smoke and the products of marijuana vaporization, 2) the additional public health concerns of intoxicated individuals leaving proposed cannabis lounges, 3) and the undermining of all the progress on smoke-free air and social denormalization of smoking that has been achieved over the past decades with leadership from cities like Berkeley, the CHC does not recommend consumption lounges. The CHC will also like to highlight that these lounges will not resolve the problems of people smoking on the streets.

Exposure to indoor smoke causes and exacerbates serious health conditions, including asthma and cardiovascular disease. Consideration of proposals for public smoking

lounges should follow the public health policies that inform the California Smoke-Free Workplace law, which only allow smoking in an “owner-operated business,” and many jurisdictions either subsequently prohibited or grandparented only existing uses. Labor Code 6404.5 defines an “owner-operated business” to mean “a business having no employees, independent contractors, or volunteers, in which the owner-operator of the business is the only worker.”

Workers and consumers should not be exposed to second-hand smoke. Even though cannabis smoke may not contain the harmful additives of cigarettes, the City Council should not allow public smoking lounges for the reasons referenced in the attached fact sheet regarding secondhand marijuana smoke published by the Berkeley-based Americans for Nonsmokers’ Rights Foundation.

To summarize:

“Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly.

People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.” -Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco

The American Society for Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) is the organization that develops engineering standards for building ventilation systems.

ASHRAE now bases its ventilation standard for acceptable indoor air quality on an environment that is completely free from secondhand tobacco smoke, secondhand marijuana smoke, and emissions from electronic smoking devices. No ventilation standard exists that renders indoor air safe from the health effects of secondhand smoke. In fact, the ASHRAE 62.01-2004 standard section 6.2.9, Ventilation in Smoking Areas, was unable to conclude any specific safe level, stating, “Smoking areas shall have more ventilation and/or air cleaning than comparable no-smoking areas. Specific ventilation rate requirements cannot be determined until cognizant authorities determine the concentration of smoke that achieves an acceptable level of risk.”

Research indicates that electronic vaping emits measurable contaminants that would be inhaled by workers and consumers, including propanediol and glycerine, and very high concentrations of PM<sub>2.5</sub> (mean 197 µg/m<sup>3</sup>; compare with the EPA ambient exposure standard of 35 µg/m<sup>3</sup> and the EU standard of 25 µg/m<sup>3</sup>). The CHC is very concerned about health impacts that could be caused by exposure to toxic air contaminants, particularly involuntary exposure to workers, and urges the City Council to consider precautionary approaches to protect public health.

## 2. Prohibition of Branded Merchandise

The CHC recommends that the sale, distribution or licensing of branded cannabis merchandise as defined in section 5000(b) of the California Code of Regulations Title 16 Division 32 be prohibited in the City of Berkeley.

Branded merchandise such as caps and t-shirts are walking billboards that children are exposed to every day. The existing ban on cannabis advertising to children is meaningless without including a ban on branded merchandise.

According to the American Academy of Pediatrics : In order to fully protect children from marijuana marketing, branded merchandise such as t-shirts and other transportable items must be regulated, as not only are they are not location-specific, but they can also be among the most effective ways to advertise to children and youth.

Such restrictions on branded merchandise exist under federal tobacco law and have been held constitutional by the courts and not a violation of the First Amendment. In *Commonwealth Brands, Inc v. United States*, 678 F. Supp. 2d 512, the court stated:

Moreover, even if such items were distributed to adults only, and retained by adults only, this would not prevent the wearers from becoming walking advertisements that would continue to display the attractive imagery. Because such items penetrate the young persons' world, they are very effective in creating the sense that tobacco use is widely accepted, which is extremely important to children and adolescents.

The court also cited an Institute of Medicine report that found that the "ubiquity of such specialty items conveys the impression that tobacco use is the norm, which in turn fosters experimentation with tobacco and smokeless products by young people."

Accordingly, the Court concluded that the ban on brand-name tobacco product merchandise is not more extensive than necessary to serve Congress' substantial interest in reducing youth tobacco use by reducing youth possession of and exposure to branded merchandise. *Commonwealth Brands, Inc. v. United States*, 678 F. Supp. 2d 512.

The Court's logic applies equally to cannabis related merchandise.

## 3. Signage

Signage should not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs, such as delivery vehicles.

## 4. Flyers and Warning Signs Language:

\*Phrasing and content with considerations for revisions have been underlined and supplemented with comments from Dr. Constantine/Dr. Levine. The original flyer drafted by the respective doctors are included at the end of the communication. The language

below are drafted and selected based on research and evidence availability. The original flyer contains language that provides directions on what cannabis users/prospective users should do, which, after some considerations, were avoided due to compelled speech concerns.

\*The following draft also only includes language. The CHC would like to emphasize the importance of graphic design and attractiveness of the flyer/warning signs in order to gather the public's attention. The function of flyers/notice is to reach the people and engage in considerations. If notices are created and dispersed without great attention to visual presentation, the public health backbone of advocacy will severely be impeded. Thus it is recommended to emphasis design in the creation of these notices.

Require in-store safety information - Health Advisory Material:

A printed material of at least 8" x 10.5", or equivalent print area (e.g. double-sided half-sheet), and minimum size 16 print should be visible to customers and available for distribution at each dispensing/sales counter. All deliveries, if allowed, should include a copy. The Health Division, in consultation with the Community Health Commission, should review and update the health advisory periodically as needed based on current scientific evidence, or at least every three years. The initial health advisory must state the following language:

**Starting cannabis use young or frequent use** may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain as late as age 25. Up to 10-20 percent of cannabis users develop dependence

Consider including/replacing with: Up to 1 out of 5 regular users of cannabis are likely to develop cannabis-use disorder, defined as a problem-causing pattern of cannabis use leading to significant impairment or distress. Most at risk are those starting at a younger age, and those with greater frequency of use.

**Mental health** - Cannabis use may be associated with greater risk of developing schizophrenia or other psychoses, and can result in increased mania symptoms in individuals with bipolar disorder. Individuals experiencing mental health symptom should consult with a provider.

Consider including/replacing with: For people with existing susceptibility to developing serious mental illnesses (psychoses), cannabis use can increase the risk that such a mental illness will develop. This is mainly true for (1) adolescents and young adults, (2) users who start cannabis at a younger age, and (3) frequent users.

**Pregnancy risk** - According to the Centers for Disease Control and Prevention (CDC), cannabis use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.

**Driving while high is a DUI - Cannabis use increases your risk of motor vehicle crashes.**

Consider including/replacing with: The consumption of cannabis products impairs your ability to drive and operate machinery, and increases your chance of a motor vehicle crash

**Heart disease** - Cannabis smoking may increase short-term risk of triggering a heart attack or stroke for individuals at risk of heart disease.

**Long-term cannabis smoking worsens respiratory symptoms and the frequency of chronic bronchitis.**

Consider including/replacing with: Long-term cannabis smoking might worsen existing breathing problems, and could lead to more frequent chronic bronchitis episodes.

**Edibles** - When consuming edibles, cannabis levels may vary per serving, and the full effects may be delayed up to 2 hours. Starting with smaller doses may allow you to achieve desired effects and avoid intoxication.

Consider including/replacing with: unlike smoked or vaped cannabis, the full effects of cannabis edibles may be delayed up to two hours.

**Consult with physician** - Cannabis users are advised to consult with a physician to evaluate potential health risks.

Consider including/replacing with: a health care provider

**\*Distributing cannabis products** to adolescents under the age 21 is against California State Law.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

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**REQUIRED IN-STORE SAFETY INFORMATION – WARNING SIGN**

A Cannabis Retailer must display a warning sign prominently behind the main dispensing counter. The sign must be at least 3 feet by 3 feet and be displayed at eye height (i.e., with mid-point 5 feet above the floor).

**1. Attention pregnant and breastfeeding mothers** - According to the U.S. Centers for Disease Control and Prevention (CDC), cannabis use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems

**2. Driving while high is a DUI** - Cannabis use increases your risk of motor vehicle



Crashes.

**3. Teen and Youth Brain Development** - Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing brain as late as age 25.

**4. Cannabis use may be associated with greater risk** of developing schizophrenia or other psychoses. Risk is highest for frequent users.

**5. Smoking cannabis long-term** may make breathing problems worse.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

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A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:

**ARE YOU AN IMMIGRANT?** Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California. This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

**ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

**ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

The Department of HHCS shall review and, if necessary, update the text of the required warnings as needed, but no less than once every three years, based on current scientific evidence and legal information.

**5. Flavored products:**

The CHC recommends Berkeley join Contra Costa County and ban the sale of flavored cannabis products for smoking or vaping, and join Pasadena and Mono County and ban the sale of cannabis infused flavored beverages that mimic “alco-pops.” All of the

members of the council are aware of the devastating ways that flavors have been used to promote tobacco use and addiction by youth, particularly youth of color. The council is already considering a ban on flavored tobacco products, including menthol, similar to that recently adopted in San Francisco. This trend has been exacerbated with the advent of flavored Juul and Juul like products for vaping nicotine. The same company invented Pax, one of the early vaping applications for cannabis. Flavors vaping and smoking products and beverages are now being used intensively by the cannabis industry in exactly the same way to attract youth to initiate consumption. Recent qualitative research with vulnerable California youth through the Oakland based FACES to the Future project confirmed that flavored products were considered the most attractive, and also that high potency products which lack the characteristic marijuana odors such as wax pens and vaping kits that are less easily detected by teachers and parents were being extensively used and widely used at school and at home.

#### **6. Expansion of cultivation uses outside of the M District**

Cannabis cultivation is associated with characteristic odors. We do not want kids going to school or growing up in places with cannabis odors. Simply biking through Oakland neighborhoods today you pass blocks saturated with cannabis odors. Cannabis cultivation locations should be at least 1,000 feet from any schools, community centers or residential areas.

#### **7. Delivery**

From the September 13th CHC recommendation proposal:

Delivery-only retail establishments should only be allowed for delivery of medicinal marijuana. To reduce youth access, no additional delivery-only businesses should be allowed for adult recreational use. If they are allowed they should only be extended to equity licensees. To monitor the effects of cannabis delivery in order to minimize the negative health outcomes of the residents, we also recommend limiting to only two licensees to properly identify the consequences and plan how to improve the delivery system to cater to better health outcomes.

#### **8. Buffer**

From the September 13th CHC recommendation proposal:

Any new retail outlet should have a 1,000 feet buffer from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

If the recommendation is not favored, CHC urge the council to consider 1,000 feet buffer from middle schools, high schools, youth centers, and parks. As previously discussed in past council meetings, adolescents during grades 7-12 are especially impressionable. Youth centers are also where these populations frequent, and where we would like them to frequent. From the public health standpoint, youth centers are locations which these age groups can build a community and support each other especially for youths who otherwise would spend their time on the streets.

### **9. Further Health Outreach and Promotion**

Currently, much of cannabis health research data and study outcomes is based on the THC levels found few decades ago. Today's THC potency is almost 10 times stronger due to the various types of cannabis processings paved way by legalization and minimum regulations. As a result, what has been brought upon our city is an experiment, and a large component of that experiment involves the health and well-being of the Berkeley residents. Thus, the CHC recommends the city to engage in continuous cannabis health impact assessment (HIA) and for the outcomes to be included in the yearly Berkeley Health Status Report.

The CHC would also like to emphasize the importance of education and outreach. If we are to trust people to make their own decisions, we need to provide them with tools to help them make the best informed decision. This includes standard educational material or programs to better engage people in discussing the health and social impacts of cannabis. Passed with overwhelming majority vote, the CHC recommends the City Council to fund public health campaigns to do cannabis education to promote awareness.

Given what we currently know about recreational use and negative health impacts, there is certainly a subset of the population who are more risk than others. The key is to provide proper, timely aid to prevent further harm, and such intervention will not be possible if these users either cannot identify harm or do not know where to seek help. In a city where we clearly already have a large number of mentally ill, homeless residents, failing to inform youth of these risks, especially those with a family history of schizophrenia, is irresponsible. It is therefore urgent to start including more health into the conversation.

The Community Health Commission thanks you in advance for your direction, management and assistance with our mission.

If you have any questions or comments, please do not hesitate to contact the Community Health Commission Chair, May Simpson through the Commission Secretary, Roberto Terrones at [RTerrones@cityofberkeley.info](mailto:RTerrones@cityofberkeley.info).

**Attachment 1:** "A Public Health Approach to the Proposed Cannabis Ordinance(s)", September 13, 2018.

**Attachment 2:** Secondhand Marijuana Smoke, American Nonsmokers' Rights Foundation.



Community Health Commission

## ACTION CALENDAR

September 13, 2018

To: Honorable Mayor and Members of the City Council  
From: Community Health Commission  
Submitted by: Nuha Afzal Khalfay, Chairperson, Community Health Commission  
Subject: A Public Health Approach to the Proposed Cannabis Ordinance(s)

### RECOMMENDATION

We recommend that the City Council delay the development timeline, approval, and implementation of the proposed cannabis ordinances for the City of Berkeley until the health protection and promotion measures outlined in this document have been fully integrated into the proposed ordinances, and take appropriate measures such as a moratorium to assure that the state does not issue licenses to businesses in Berkeley until such time as local policy is defined.

### SUMMARY

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing, and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguin and the City Council referred the development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

Recent study findings indicate that legalization of recreational cannabis should be carried out cautiously, to prevent undue exposure of youth, pregnant women, and the expansion of problem use; that unfettered expansion and diversification of products and of marketing are not prudent; and that, like tobacco and alcohol, cannabis use may pose significant risks to public health, especially when initiated early.

In this document we take the lessons learned from the public health responses to tobacco and alcohol use and recommend limits on cannabis access, cultivation, sales and marketing in the City of Berkeley, as well as methods for investment in addressing problem cannabis usage and promoting the public's health.

## FISCAL IMPACTS OF RECOMMENDATION

Limited loss in local tax revenue from the delay in implementing the relevant cannabis ordinances. Long-term savings to the Police, Fire, and Health, Housing & Community Services Departments, as well as the Berkeley Unified School District, from decreases in problem use among youth and pregnant women.

## CURRENT SITUATION AND ITS EFFECTS

Based on the most reliable and up-to-date scientific evidence, while legalization can help mitigate the negative social effects of the war on drugs, excessively rapid introduction of newly legalized recreational cannabis (“cannabis”), presents a significant potential threat to the public health, safety, and welfare of the residents of Berkeley, and particularly to youth and pregnant women.

Even before legalization of adult use of cannabis, the perception of risk from cannabis consumption has dropped from 58.3% to 31.1% among youth nationally between 2000 and 2016;<sup>1</sup> and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight.<sup>2</sup> Between 2009 and 2016 use in Northern California pregnant women increased from 4.2% to 7.1, in teen mothers the increase was from 12.5% to 21.8%, and in young mothers ages 18 to 24 years use rose from 9.8% to 19%.<sup>3</sup>

In 2013-2015, the prevalence of lifetime marijuana use (7 or more times) among 11<sup>th</sup> graders in the Berkeley Unified School District (BUSD) was 38%, almost double that of the state as a whole (19.2%) and substantively more than for Alameda county (22.0%),<sup>4</sup> indicating that Berkeley youth have not had difficulty obtaining marijuana for recreational use. For BUSD 11<sup>th</sup> graders, 11.4% of boys and 4.4% of girls used marijuana on more than 10 days in the previous month, vs. 8.6% and 4.7% respectively, in Alameda County.<sup>5</sup>

In 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence

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<sup>1</sup> Johnston LD, O'Malley PM, Miech RA, Bachman JG, Schulenberg JE. *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.

<sup>2</sup> Brown QL, Sarvet AL, Shmulewitz D, Martins SS, Wall MM, Hasin DS. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.

<sup>3</sup> Young-Wolff KC, Tucker L, Alexeeff S, et al. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.

<sup>4</sup> Kidsdata.org. *Marijuana use in lifetime, by grade level*. Accessed 12 March 18.

<sup>5</sup> *Ibid*.

of association of cannabis use with harm in a wide range of areas.<sup>6</sup> The NASEM study found “substantial evidence”<sup>7</sup> to support the following conclusions:

- a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;
- b) Maternal cannabis smoking during pregnancy is associated with low birth weight in offspring;
- c) Cannabis use is associated with increased risk of motor vehicle crashes;
- d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;
- e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and
- f) Increases in cannabis use frequency are associated with developing problem cannabis use.

The NASEM study found that less conclusive, but still worrisome, emerging evidence exists for a wide range of other harms, including impaired academic achievement and educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others.

An additional concern is that even in states that have legalized adult use of marijuana, Federal immigration authorities are deporting immigrants (documented or undocumented) for cannabis possession, use, or working in the industry. At a time of heightened risk to the immigrant community, alerting immigrants to this additional legal hazard is important.

In light of these issues and other health effects, the Community Health Commission recommends setting a prudent and thoughtful approach to the complex issues surrounding legalization that should include strengthening the protection of youth and informing pregnant women and others on the foreseeable impacts of the legalization of adult use of recreational marijuana.

## BACKGROUND

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguín and the City Council referred the

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<sup>6</sup> The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press. <https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.

<sup>7</sup> **The Academies defined Substantial Evidence as follows:** *There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest.*

development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

The Community Health Commission wants to assure that the local ordinances put in place to regulate cannabis in Berkeley reflect a public health approach. We propose that the City of Berkeley's cannabis ordinances address the following issues to make sure the public's health is being protected:

## RETAIL OUTLETS

- Limit retail outlets to six. Existing regulation for retail sales of medicinal marijuana limit the number of locations to six. As these six have been allowed to sell adult recreational as well as medicinal marijuana, we recommend that the City limit the total number of retail outlets for both medicinal and adult recreational use to six. We also know from tobacco that outlet density is positively correlated with youth cigarette smoking.<sup>8</sup> Thus, for a city the size of Berkeley, with a population of approximately 121,240, six retail outlets are sufficient to provide a ratio of 1 outlet per 20,206 people.<sup>9</sup> Los Angeles County is recommending 1 storefront outlet per 52,000 residents and Washington State started with 1:22,000 residents. If even 1-2 new retailers are allowed, they should be limited to "equity applicants."
- Community input is needed on the decision to open any additional outlets and where these should be situated. We recommend a Conditional Use Permit to assure that the community is heard and so that the burden of retail outlets is not concentrated on one area of the City.
- Delivery-only retail establishments should only be allowed for delivery of medicinal marijuana. To reduce youth access, no additional delivery-only businesses should be allowed for adult recreational use. All sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Off-site Delivery to the Consumer of adult use Cannabis or Cannabis Products is not allowed. Cannabis Retailing by means of Internet ordering or telephone ordering and Delivery to the Consumer service is prohibited in Berkeley.
- Any new retail outlet should have a 1,000 feet buffer from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

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<sup>8</sup> Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065

<sup>9</sup> United States Census Bureau. Quickfacts: Berkeley city, California.

[www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.

## Public Health Approach to Cannabis Ordinances

- Cannabis Retailers should sell only Cannabis and other Cannabis Products, produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell other goods, including but not limited to food; tobacco products; alcoholic beverages; non-cannabis medicines or supplements, or items of clothing. The Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from the City of Berkeley. A Cannabis Retailer may not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. A Cannabis Retailer may not hold or maintain a license to sell tobacco products from the City of Berkeley or the State of California. A permit shall not be issued to authorize Cannabis Retailing in a Pharmacy.
- Lounges and other methods of on-site consumption of recreational marijuana should be prohibited. No Cannabis Product shall be smoked, ingested or otherwise consumed on the premises of a permit holder or in the public right-of-way within twenty-five feet of a Cannabis Retailer. Cannabis Retailers shall post a sign near their entrances and exits providing notice of this policy.

## RESTRICTIONS ON ADVERTISING AND MARKETING

- Mirror the current BMC 20.66.030 Tobacco product advertising: No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location within one thousand four hundred feet of the perimeter of any school.
- No claims may be made in Advertising or Marketing materials in Berkeley for Cannabis or Cannabis Products or brands that assert such products are safe because they are regulated by the state or local licensing authority (e.g., “state-approved” or “state-licensed”). This restriction does not apply to the display of license or permit numbers where required.
- Advertising and Marketing materials in Berkeley for adult-use Cannabis or Cannabis Products or brands may not include claims of therapeutic or curative effects.
- Products that may not be sold in Berkeley may not be Advertised in Berkeley.
- Advertising and Marketing materials in Berkeley for Cannabis and Cannabis Products or brands may not be Attractive to Children or Youth.
- Advertising and Marketing materials in Berkeley may not depict activities or conditions considered risky when under the influence of Cannabis, such as operating a motorized vehicle or boat, being pregnant, or breastfeeding.

## PROHIBITED PRODUCT TYPES



## Public Health Approach to Cannabis Ordinances

- (a) Cannabis Retailers should not offer for sale, or possess with intent to sell or offer for sale or use:
- i) Any Cannabis or Cannabis Product that is Attractive to Children or Youth.
  - ii) Any Cannabis or Cannabis Product with Packaging or Labeling that is Attractive to Children or Youth.
  - iii) Synthetic cannabinoid containing products.
  - iv) Cannabis flower with potency in excess of 20% THC content.
  - v) Cannabis Products with THC content in excess of 50%.
  - vi) Cannabis flower to which a Characterizing Flavor has been added.
  - vii) Cannabis Products, other than those Edible Cannabis Products noted in (b) below, to which a Characterizing Flavor has been added.
  - viii) Cannabis or Cannabis Products whose Packaging, Labeling, or Marketing materials include claims of health, therapeutic or curative effects, or claims related to “potency” (beyond listing of cannabinoid content), “strength,” “high,” or being “natural.”
  - ix) Cannabis or Cannabis Products that contain any noncannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include, but are not limited to, nicotine, caffeine and alcohol [excepting a minimum of alcohol that is residual from manufacturing or required solvents for the cannabis containing product if the product’s Packaging, Labeling and Marketing make no other reference to alcoholic beverages].
  - x) Any Cannabis Product that would otherwise be classified as a potentially hazardous food (as defined in the Health and Safety Code 113871), including a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation.
  - xi) Any Cannabis-infused ready-to-drink beverages, powders, gels or other concentrates with instructions for the preparation of Cannabis-infused beverages.
  - xii) Any Cannabis product that the Health, Housing and Community Services Department determines is easily confused with a commercially available food without Cannabis.
- (b) A Cannabis Retailer may sell no more than 10 (ten) product variations (SKUs) of Edible Cannabis Products, with or without Characterizing Flavors, in the form of hard lozenges, or chocolates with no additional flavors, with individually wrapped servings not exceeding 10 mg THC, and packages not exceeding 100 mg per package.

## Public Health Approach to Cannabis Ordinances

- (c) Tinctures and other non-Edible Cannabis Products may not have Characterizing Flavors, may not exceed 1,000 mg THC per package for adult-use, and must have clear instructions and dispensing mechanism such as a marked dropper or other device for dispensing doses of 10 mg THC or less.
- (d) Cannabis or a Cannabis Product is presumed to have a Characterizing Flavor if a Manufacturer or any of the Manufacturer's agents or employees has:
- i) Made a public statement or claim that the Cannabis or Cannabis Product has or produces a Characterizing Flavor, including, but not limited to, text and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate information about the flavor, taste, texture or aroma of a Cannabis Product; or
  - ii) Taken actions directed to consumers that would reasonably be expected to result in consumers believing that the Cannabis or Cannabis Product imparts a Characterizing Flavor.

Every Cannabis Retailer shall maintain on the Premises the original Labeling and Packaging provided by the Manufacturer for all Cannabis Products that are sold or offered for sale by the establishment separately from the original Packaging designed for retail sale to the consumer. The original Labeling and Packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

## WARNING LABELS

- The "exit packaging" for cannabis products, including edibles, should have large warning labels.

Any Opaque Exit Package provided by the retailer for Cannabis or Cannabis Product purchased by a customer must carry one of the following warnings in a black-outlined yellow box covering 20% of the front panel of the exit packaging and using at least 12 point font. Each of the warnings should be provided on an equal proportion of exit packaging provided. The Department of HHCS should review and update warnings as needed based on current scientific evidence at least every three years. Stickers are acceptable.

- a. **Are you pregnant or breastfeeding?** According to the Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems. **GOVERNMENT HEALTH WARNING.**
- b. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes. **GOVERNMENT HEALTH WARNING.**

- c. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain. **GOVERNMENT HEALTH WARNING.**
- d. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users. **GOVERNMENT HEALTH WARNING.**
- e. Smoking marijuana long term may **make breathing problems worse.** **GOVERNMENT HEALTH WARNING.**

## PRICING AND DISCOUNTING

- PROHIBITION ON THE SALE OF CANNABIS FOR LESS THAN THE LISTED PRICE. No Cannabis Retailer shall: (1) honor or accept a Price Reduction Instrument in any transaction related to the sale of Cannabis or Cannabis Products to a consumer; (2) sell or offer for sale Cannabis or Cannabis Products through any multi-package discount or otherwise provide to a consumer any Cannabis or Cannabis Products for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; (3) sell, offer for sale, or otherwise provide any product other than Cannabis or Cannabis Products in exchange for the purchase of Cannabis or Cannabis Products; or (4) otherwise sell, offer for sale, or provide Cannabis or Cannabis Products for less than the Listed Price. In addition, Cannabis Retailers must sell, offer for sale, or provide Cannabis or Cannabis Products for the same listed price every day of the week in a given week.
- PRICE FLOOR FOR CANNABIS AND CANNABIS PRODUCTS. The Department of HHCS is authorized, but not required, after 5 years from the effective date of this measure, to establish minimum prices for Cannabis and Cannabis Products. If such a Price Floor is established, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; City of Berkeley Department of HHCS must review the appropriateness of the Price Floor at least every two years and may adjust the Price Floors at that time to account for changes in the consumer price index, or other considerations related to reducing illegal commerce. The Department of HHCS may promulgate such rules as may be necessary for the purpose of carrying out this section.

## REQUIRED IN-STORE SAFETY INFORMATION

- A Cannabis Retailer must display a warning sign prominently behind the main dispensing counter. The sign must be at least 3 feet by 3 feet and be displayed at eye height (i.e., with mid-point 5 feet above the floor).

### **WARNING:**

## Public Health Approach to Cannabis Ordinances

1. **Are you pregnant or breastfeeding?** According to the U.S. Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.
2. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes.
3. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing teen brain.
4. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users.
5. Smoking marijuana long-term may **make breathing problems worse.**

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:
  - **ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California.** This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
  - **ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
  - **ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- The Department of HHCS shall review and, if necessary, update the text of the required warnings as needed, but no less than once every three years, based on current scientific evidence and legal information.

#### RESTRICTIONS ON BRANDED MERCHANDISE

- No Cannabis Business or Cannabis or Cannabis Product brand identification, including logos, trademarks or names, may be used or licensed for use on clothing, toys, games, or game equipment, or other items that are typically marketed primarily to or used primarily by persons under the age of 21, or that are Attractive to Children or Youth.

#### TAX PROPOSALS AND USES FOR SAID TAX

- The City of Berkeley recently reduced the tax on adult use cannabis from 10% to 5%. To be most effective at addressing the harms caused by the past criminalization of marijuana possession and to promote the public's health, we recommend in one year that the City Council raise the tax, with a ceiling of 15% of gross receipts, and an additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured or sold by the taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17%. Experience from other states has shown a rapid fall in price in the first two years post-legalization, which will be likely to increase youth consumption.
- Building on the success of the Sugar Sweetened Beverage Tax and its board, we recommend that the City Council establish a Cannabis Tax Community Advisory Board of nine residents of the City of Berkeley to recommend use of tax proceeds and priorities for funding, make annual recommendations on the spending of tax proceeds, recommend appropriate efforts to evaluate previous expenditures, and to review the annual report. Spending decisions would remain with the City Council, which may choose not to accept any particular recommendation of the Cannabis Tax Community Advisory Board.
  - The Board shall have at least one public health professional, one expert in addiction or substance use prevention and treatment, one physician, a representative of a community based organization, a representative of community clinics, a school nurse or school-based mental health professional, a representative of a community based organization serving low income people, the city health officer or his or her designee. At least

two members shall be residents of communities disproportionately affected by drug-related incarceration.

- The Board shall advise and make recommendations on how to best to spend funds to the City Council, to:
  1. Prevent cannabis consumption by youth, during pregnancy or in excessive or harmful ways;
  2. Prevent other forms of substance abuse or addiction;
  3. Prevent other leading causes of illness, injury and premature death in the community whether or not arising from cannabis use; and/or
  4. Promote wellness and reduce inequity in health conditions;
  5. Reduce negative social impact of substance abuse;
  6. Reduce drug-related incarceration, including, for example:
    - i. Support to reduce new drug-related incarceration;
    - ii. Programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA;
    - iii. Re-entry programs for those released from incarceration to avoid recidivism; and
    - iv. Job training programs and other community-based and educational programs, especially those that will minimize drug-related incarceration.
  
- Recommended activities may include promoting or implementing policy, systems or environmental changes to create a healthier community or to reduce drug-related incarceration, providing education, or community-based programs serving residents of the City of Berkeley with a focus on low-income communities

#### RATIONALE FOR RECOMMENDATION

We are making these recommendations as we have learned from the public health experience with tobacco and alcohol that products intended for adults are often marketed and accessible to children and youth. We have also learned from the other states that have recently legalized adult use of marijuana that changes in consumption patterns and pricing may put the public's health at risk. Therefore, the Community Health Commission is making the above recommendations to safeguard the health, safety and welfare of the residents of the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

The alternative action is to allow the current discussion to go forward without the input of the Community Health Commission; this is not a viable option.

#### ENVIRONMENTAL SUSTAINABILITY

These measures are likely to reduce second hand smoke exposures from marijuana, exposure of cannabis business employees to second-hand smoke, and to delay or decrease water and electricity consumption related to cannabis production or sale.

### CONTACT PERSON

Robert Terrones, Secretary, Community Health Commission, (510) 981-5324

### Attachments:

1: *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.

2. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.

3. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.

4. Kidsdata.org. *Marijuana use in lifetime, by grade level*.

5. The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press.  
<https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.

6. The Academies defined Substantial Evidence as follows: There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest. <sup>1</sup> Safeway (3), Berkeley Bowl (2), Whole Foods (2), Traders Joes, Berkeley Natural Grocery, Monterey Market, Star Grocery.

7. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065

8. United States Census Bureau. Quickfacts: Berkeley city, California.  
[www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.



## Secondhand Marijuana Smoke

“Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly. People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.”

*-Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco*

### Facts about secondhand marijuana smoke:

- Marijuana smoke is created by burning components of plants in the genus Cannabis.
- Secondhand marijuana smoke is a complex chemical mixture of smoke emitted from combusted marijuana and the smoke that is exhaled by the user.
- Secondhand marijuana smoke contains fine particulate matter that can be breathed deeply into the lungs.
- Secondhand marijuana smoke contains many of the same cancer-causing substances and toxic chemicals as secondhand tobacco smoke. Some of the known carcinogens or toxins present in marijuana smoke include: acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinoline.<sup>i</sup>
- Marijuana smoke contains tetrahydrocannabinol (THC), the active chemical in cannabis.

### Health risks of exposure to secondhand marijuana smoke:

Since marijuana is illegal under federal law, there have been a limited number of studies examining health risks associated with marijuana use and exposure in the United States. Health risks from primary and secondhand smoke exposure may also be difficult to determine as marijuana is often used in combination with tobacco.

However, peer-reviewed and published studies do indicate that exposure to secondhand marijuana smoke may have health and safety risks for the general public, especially due to its similar composition to secondhand tobacco smoke.

- Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs,<sup>ii</sup> which can cause lung irritation, asthma attacks, and makes respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.<sup>iii</sup>
- Significant amounts of mercury, cadmium, nickel, lead, hydrogen cyanide, and chromium, as well as 3 times the amount of ammonia, are found in mainstream marijuana smoke than is in tobacco smoke.<sup>iv</sup>
- In 2009, the California Office of Environmental Health Hazard Assessment added marijuana smoke to its Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. It reported that at least 33 individual constituents present in both marijuana smoke and tobacco smoke are Proposition 65 carcinogens.<sup>v, vi</sup>



- Secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.<sup>vii</sup>
- Secondhand marijuana exposure impairs blood vessel function. Published studies on rats show that thirty minutes of exposure to secondhand marijuana smoke at levels comparable to those found in restaurants that allow cigarette smoking led to substantial impairment of blood vessel function. Marijuana smoke exposure had a greater and longer-lasting effect on blood vessel function than exposure to secondhand tobacco smoke.<sup>viii</sup>
- One minute of exposure to marijuana SHS substantially impairs endothelial function in rats for at least 90 minutes, considerably longer than comparable impairment by tobacco SHS. The findings in rats suggest that SHS can exert similar adverse cardiovascular effects regardless of whether it is from tobacco or marijuana.<sup>ix</sup>
- Secondhand marijuana smoke and secondhand tobacco smoke is similar in many ways. More research is needed, but the current body of science shows that both tobacco and marijuana smoke have similar chemical composition and suggests that they may have harmful cardiovascular health effects, such as atherosclerosis (partially blocked arteries), heart attack, and stroke.<sup>x</sup>
- Particle concentrations from dabbing and vaporizing cannabis can create levels of indoor air pollution similar as those seen in extreme air pollution events like wildfires and severe industrial pollution. Exposure at these concentrations can cause cardiovascular and respiratory disease.<sup>xi</sup>
- People who are exposed to secondhand marijuana smoke can have detectable levels of THC (tetrahydrocannabinol) in their blood and urine.<sup>xii</sup>
- Marijuana also can be contaminated with mold, insecticides or other chemicals that may be released in secondhand smoke.<sup>xiii</sup>

### **Including Marijuana Smoking in Smokefree Public Place and Workplace Laws:**

- Everyone has the right to breathe smokefree air. Smokefree policies are designed to protect the public and all workers from exposure to the health hazards caused by exposure to secondhand tobacco smoke. The same should be true for secondhand marijuana smoke.
- The percent of U.S. adults who use marijuana more than doubled from 4.1% to 9.5% between 2001-2002 and 2012-2013,<sup>xiv</sup> which may also indicate an increase in exposure to secondhand marijuana smoke.
- The American Society for Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) is the organization that develops engineering standards for building ventilation systems. ASHRAE now bases its ventilation standard for acceptable indoor air quality on an environment that is completely free from secondhand tobacco smoke, secondhand marijuana smoke, and emissions from electronic smoking devices.<sup>xv</sup>
- In order to protect public health, improve consistency, and aid enforcement, smokefree laws for public places and workplaces should include tobacco as well as marijuana, whether it is smoked or aerosolized. Allowing marijuana smoking in places where smoking is now prohibited could undermine laws that protect the public from exposure to secondhand smoke. The Tobacco Control Legal Consortium issued an informative brief on [Lessons from Tobacco Control for Marijuana Regulation](#).<sup>xvi</sup>

- Smokefree policies provide incentives to quit smoking, help denormalize smoking behavior, and are particularly effective among youth and young adults who are vulnerable to visual cues and social norms of smoking. It is likely that smokefree policies for marijuana will have a similar effect.
- As of October 2019, 607 localities and 25 states/territories/commonwealths restrict marijuana use in some or all smokefree spaces.

**In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.**

### **ANR Foundation's Position on Exposure to Secondhand Marijuana Smoke:**

Marijuana smoke is a form of indoor air pollution. Therefore, ANR, our lobbying organization, includes marijuana within the definition of smoking, and all of our model laws and policies include a prohibition on smoking marijuana wherever smoking of tobacco products is not allowed. Our organization does not have a position on whether marijuana should be legalized; we are committed to smokefree protections from secondhand smoke from tobacco products, marijuana and aerosol from electronic smoking devices.

**Nobody should have to breathe secondhand marijuana smoke at work, in public, or where they live.** If we want healthy, smokefree air for workers and the public, then products like marijuana and electronic smoking devices (which can be used to "vape" a wide range of substances, including marijuana and hash oil) must not be used in smokefree environments where others are forced to breathe the secondhand emissions.

### **References**

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- <sup>i</sup> Moir, D., et al., A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chem Res Toxicol* 21: 494-502. (2008). <http://www.ncbi.nlm.nih.gov/pubmed/18062674>
- <sup>ii</sup> Hillier, FC.; et al. "Concentration and particle size distribution in smoke from marijuana cigarettes with different  $\Delta^9$ -tetrahydrocannabinol content." *Fundamental and Applied Toxicology*. Volume 4, Issue 3, Part 1, June 1984, Pages 451-454. <http://www.sciencedirect.com/science/article/pii/0272059084902021>
- <sup>iii</sup> "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency. <http://ephtracking.cdc.gov/showAirHealth.action#ParticulateMatter>
- <sup>iv</sup> Moir, D., et al., A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chem Res Toxicol* 21: 494-502. (2008). <http://www.ncbi.nlm.nih.gov/pubmed/18062674>
- <sup>v</sup> "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009. [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf)
- <sup>vi</sup> Wang, X., et al., "Brief exposure to marijuana secondhand smoke impairs vascular endothelial function" (conference abstract). *Circulation* 2014; 130: A19538. [http://circ.ahajournals.org/content/130/Suppl\\_2/A19538.abstract](http://circ.ahajournals.org/content/130/Suppl_2/A19538.abstract)
- <sup>vii</sup> "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009. [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf)
- <sup>viii</sup> Wang, X., et al., "Brief exposure to marijuana secondhand smoke impairs vascular endothelial function" (conference abstract). *Circulation* 2014; 130: A19538. [http://circ.ahajournals.org/content/130/Suppl\\_2/A19538.abstract](http://circ.ahajournals.org/content/130/Suppl_2/A19538.abstract)
- <sup>ix</sup> Wang, X.; Derakhshandeh, R.; Liu, J.; Narayan, S.; Nabavizadeh, P.; Le, S.; Danforth, O.M.; Pinnamaneni, K.; Rodriguez, H.J.; Luu, E.; Sievers, R.E.; Schick, S.F.; Glantz, S.A.; Springer, M.L., "One minute of marijuana secondhand smoke exposure substantially impairs vascular endothelial function," *Journal of the American Heart Association* 5(8): e003858, August 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015303/>

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<sup>x</sup> Springer, M.L.; Glantz, S.A. "Marijuana Use and Heart Disease: Potential Effects of Public Exposure to Smoke," University of California at San Francisco. April 13, 2015.

<https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/MSHS%20fact%20sheet%20for%20CA%204-13-15.pdf>

<sup>xi</sup> Jaques, P, Zalay, M, Huang, A, Jee, K, Schick, SF "Measuring Aerosol Particle Emissions from Cannabis Vaporization and Dabbing", Proceedings of the 15th Meeting of the International Society for Indoor Air Quality and Climate. July 22-27, 2018. Philadelphia, PA.

<sup>xii</sup> Herrmann ES, et al., "Non-smoker exposure to secondhand cannabis smoke II: Effect of room ventilation on the physiological, subjective, and behavioral/cognitive effects." *Drug and Alcohol Dependence*. 2015 Jun 1;151:194-202. <http://www.ncbi.nlm.nih.gov/pubmed/25957157>

<sup>xiii</sup> [UCDavis Researchers, research letter published online in the journal of Clinical Microbiology and Infection](#), "A microbiome assessment of medical marijuana" April 2017 Volume 23, Issue 4, Pages 269–270

[https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(16\)30605-X/pdf](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(16)30605-X/pdf)

<sup>xiv</sup> Hasin DS, et al. "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013." *JAMA Psychiatry*. Published online October 21, 2015. <http://archpsyc.jamanetwork.com/article.aspx?articleid=2464591>

<sup>xv</sup> ANSI/ASHRAE Standard 62.1-2016 – Ventilation for Acceptable Indoor Air Quality. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

<https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>

<sup>xvi</sup> Cork, Kerry. "Toking, Smoking & Public Health: Lessons from Tobacco Control for Marijuana Regulation." Tobacco Control Legal Consortium. June 2015. [http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-synopsis-marijuana-tobacco-2015\\_0.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-synopsis-marijuana-tobacco-2015_0.pdf)

**For more information, visit <https://nonsmokersrights.org/marijuana-smoke> or call us at 510-841-3032.**

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Planning Commission

October 15, 2019

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Chris Schildt, Chairperson, Planning Commission and Mary Kay Lacey, Commissioner, Planning Commission

Subject: Planning Commission statement of opposition to expansion of cultivation and delivery-only cannabis uses to MM, MU-LI and MUR districts

We are writing to provide information regarding action taken by the Planning Commission regarding the City's comprehensive cannabis program during meetings before the Commission on July 17, 2019 and September 4, 2019. Generally, the Commission agreed with the Planning Department staff's recommendations, however, we opposed the expansion of cultivation for cannabis in the MM and MU-LI districts, and opposed delivery-only uses for cannabis in the MM, MU-LI and MUR districts. This letter explains the reasoning behind our votes.

During the July 17th and September 4th meetings, the Planning Commission heard public comment from members of the West Berkeley Artisans and Industrial Companies (WEBAIC). Those members expressed concern that if the MM, MU-LI and MUR districts are zoned to allow cultivation and delivery-only uses of cannabis, that critical goals of the City's existing West Berkeley Plan will be adversely impacted. As the Council is aware, current zoning in the M-prefixed districts is designed to prevent displacement of artists, as well as to preserve light industrial and manufacturing uses in the City. As members of WEBAIC emphasized during our meetings, without this protection, such uses will be "out competed" by more highly capitalized uses. Specifically, under the West Berkeley Plan (Land Use Goal, Policy A), it is a City priority to retain, through planning, zoning and land use, policies which shield manufactures from economic incompatibility with other uses. Without these protections, the City is at risk of losing our art and light-industrial "mixed-use" community, and the economic diversity that it brings.

The Planning Commission shares WEBAIC's concerns. We believe that if cultivation is expanded into the MM and MU-LI districts; and delivery-only retail for cannabis is allowed in the MM, MU-LI and MUR districts, the existing businesses in these districts will be unable to compete economically and will be priced out. In particular, the Planning Commission is aware that this is precisely what has happened in other communities (including Oakland and throughout Colorado) where artists, makers, and manufacturers have been displaced by competition for space from the evolving cannabis industry—which, as we understand it, typically pays two to four times the going rate for art and industrial space. Whether these newly created cannabis businesses will remain viable is an open question, and already many have not.

As a result, and with these considerations in mind, the Planning Commission believes we should exercise caution as we move forward to implement a comprehensive cannabis program.

Cannabis can be part of West Berkeley's economy, but having already demonstrated the potential to disrupt existing viable economies, we urge the City Council to carefully consider, and hopefully follow, the Commission's recommendation to oppose the expansion of cannabis cultivation and delivery only uses in the MM, MU-LI and MUR zoning districts — thereby ensuring that we continue to honor the West Berkeley Plan by protecting artists and light industrial and manufacturing uses, and the good jobs and vibrant culture they provide.

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL  
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET**

**CONSIDERATION OF CANNABIS ORDINANCE REVISIONS AND  
EQUITY PROGRAM**

Notice is hereby given by the City Council of the City of Berkeley that on **JANUARY 28, 2020 at 6:00 PM** a public hearing will be conducted to provide direction regarding proposed ordinance language alternatives, adopt a resolution and take the following actions:

Adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which will:

- A. Create a path to allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Create a path to allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect health of the general public and youth with additional advertising, signage and sales regulations.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 16, 2020**.

For further information, please contact Elizabeth Greene, Land Use Planning at 510-981-7410.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 17, 2020 – The Berkeley Voice,  
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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 16, 2020.

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Mark Numainville, City Clerk

